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S. HRG. 103–130

NOMINATIONS OF MORTIMER L. DOWNEY III TO BE DEPUTY SECRETARY; STEPHEN H. KAPLAN TO BE GENERAL COUNSEL; AND MICHAEL P. HUERTA TO BE ASSOCIATE DEPUTY SECRETARY OF THE DEPARTMENT OF TRANSPORTATION

Y 4.C 73/7:S.HRG.103-130

Nominations of Mortimer L. Downey I...

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

MAY 17, 1993

Printed for the use of the Committee on Commerce, Science, and Transportation

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NOMINATIONS OF MORTIMER L. DOWNEY III TO BE DEPUTY SECRETARY; STEPHEN H. KAPLAN TO BE GENERAL COUNSEL; AND MICHAEL P. HUERTA TO BE ASSOCIATE DEPUTY SECRETARY OF THE DEPARTMENT OF TRANSPORTATION

MONDAY, MAY 17, 1993

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, D..

The committee met, pursuant to notice, at 2 p.m., in room SR–253 of the Russell Senate Office Building, Hon. Ernest F. Hollings (chairman of the committee) presiding.

Staff members assigned to this hearing:

Mr. Downey: Donald M. Itzkoff, staff counsel, and Rebecca A. Kojm, professional staff member; and Gerri Lynn Hall minority senior professional staff member, and Emily J. Gallop and Susan Adams, minority professional staff members.

Mr. Kaplan: Claudia A. Simons, staff counsel, and Rebecca A. Kojm, professional staff member; and Gerri Lynn Hall minority senior professional staff member, and Emily J. Gallop and Susan Adams, minority professional staff members.

Mr. Huerta: Randolph H.M. Pritchard and Rebecca A. Kojm, professional staff members; and Gerri Lynn Hall minority senior professional staff member, and Emily J. Gallop and Susan Adams, minority professional staff members.

OPENING STATEMENT OF SENATOR HOLLINGS

The CHAIRMAN. Good afternoon. The committee will please come to order. We have three important appointments for the Department of Transportation. And we would be delighted to hear from our chairman of the Public Works and Transportation Committee, Senator Moynihan.

Please come forward here, Mortimer.

If we keep Mortimer separated from Morton, we will be all right. [Laughter.]

STATEMENT OF HON. DANIEL PATRICK MOYNIHAN, U.S. SENATOR FROM NEW YORK

Senator MOYNIHAN. Mr. Chairman, thank you for your courtesy in hearing us today, sir. I have the honor to introduce to you and commend to you the Honorable Mortimer Downey, who is the

President's nominee to be Deputy Secretary of Transportation. This continues a career in public administration in the field of transportation which Mr. Downey has pursued now for some years, and to genuine distinction.

He was able to take over the Metropolitan Transit Authority in the New York region in 1981, and left almost as popular as he arrived. [Laughter.]

The CHAIRMAN. That is quite a feat.

Senator MOYNIHAN. No one has done that with a subway system in our time, sir. And it ought to be encouraged.

He is a transportation expert; that is, his applied experience has been in this field, but he is also, and perhaps more importantly, and I would like to say it, he is one of those who has devoted himself to the subject of public administration, as a calling, as a honorable and indispensible form of public service. He has brought distinction to all his work.

I commend him to you, sir, as a person who you will have been proud to work with, and I know it will be a rewarding experience for the committee, as well as for the Cabinet.

The CHAIRMAN. Very good, sir. You can stay with the nominee if you please, sir, or if you have other engagements, we understand.

Senator Pressler, do you have a question for Senator Moynihan?

Senator PRESSLER. No. I just want to commend him for presenting this witness. I have some questions for the witness, some tough questions. But I just wanted to greet my colleague.

Senator MOYNIHAN. Thank you, sir.

The CHAIRMAN. Mr. Chairman, we thank you very much for your appearance today.

Mr. Downey, you have experience in the field of the budget, and we worked with you when you were over there with the House Budget Committee. One of the real concerns of this committee is that transportation revenues are not being expended for transportation. Specifically, in the Federal Highway Administration, you will find about $19 billion in revenues, and only $11 to $12 billion, or sometimes less is spent on highways, while the rest is spent on the deficit.

For the Federal Aviation Administration, similarly, we carry about a $7 to $8 billion overrun there to help us with the deficit. And then we have to face up to that fact when we bring a so-called jobs and stimulus bill with moneys for FAA or for moneys for the highways, which we have not paid for. The very crowd that is howling about funds for jobs and the stimulus program has already spent these moneys on their deficit.

Please, let us get programs promulgated within the Department that will, in a judicious fashion, correct this situation. We have a backup, particularly at the airport and airways over the country. I have talked to Secretary Peña on this score, and if there is some comment you would like to make, I would appreciate it. Thank you.

At this point, I will put my prepared statement in the record.

[The prepared statement of Senator Hollings follows:]

PREPARED STATEMENT OF SENATOR HOLLINGS

This afternoon the Commerce, Science, and Transportation Committee is holding a hearing on the President's proposed nominations for three critical positions at the Department of Transportation: Mortimer L. Downey of New York to be Deputy Sec-

retary; Stephen H. Kaplan of Colorado to be General Counsel; and Michael P. Huerta of California to be Associate Deputy Secretary. I welcome you all to this hearing.

In January, when the committee considered the nomination of Secretary Peña, I outlined a number of the major transportation issues and challenges facing the Department. In many respects, our national transportation system remains the finest in the world, but in other areas, we now confront a troubling legacy of neglect by previous administrations. Some say that the market should decide the fate of our transportation industries, but the fact is that, unless we take decisive action, the U.S. merchant marine, for example, soon may cease to exist. Our largest airlines may drown in a tide of red ink unless a workable policy framework can be formulated and implemented. In a time of burdensome fiscal restraints, our surface transportation infrastructure must keep pace and even be improved if the United States is to remain competitive in the rapidly changing global marketplace.

For fiscal year 1994, the President has proposed more than $40 billion in taxpayer funds for DOT programs. If confirmed, each of the nominees will be entrusted with assisting the Secretary in overseeing the appropriate expenditure of these funds, and with carrying out, under the Secretary's guidance, DOT's mission of ensuring a safe and efficient national transportation system. The task of the nominees will be a daunting one, but one to which they bring much knowledge and experience.

Mr. Downey, as the nominee for Deputy Secretary, brings a wealth of transportation, financial, and management experience. During his career, he has served with the Port Authority of New York and New Jersey, the House Budget Committee, as a Deputy Under Secretary with DOT during the Carter administration, and most recently, as chief financial officer with the Metropolitan Transportation Authority of New York. Given the traditional principal responsibility of the Deputy Secretary for managing the more than 100,000 civil servants and military personnel who serve in DOT, I am confident that his experience has prepared him for the tremendous challenges confronting the Department.

Mr. Kaplan, if confirmed as General Counsel, will be the chief legal officer for DOT. The nominee brings to the position years of legal experience serving as attorney or legislative advisor at the local, State, and Federal levels of government. He is currently on leave from the law firm of Davis, Graham, and Stubbs in Denver, CO. Prior to this position, he served as city attorney for the city of Denver, as an associate and then partner at the law firm of Kelly, Haglund, Garnsey, and Kahn, and as an assistant and then first assistant attorney general for the State of Colorado. In his position as Denver City Attorney, Mr. Kaplan was involved in matters relating to the Denver International Airport.

Mr. Huerta, if confirmed as Associate Deputy Secretary of Transportation, will serve as the Director of DOT's Office of Intermodalism, recently created under the Intermodal Surface Transportation Act of 1991 to promote the development of a national intermodal transportation system in the United States. Mr. Huerta has had significant experience with intermodal issues, having recently served as the executive director of the Port of San Francisco and prior to that as the commissioner for the Department of Ports, International Trade and Commerce for the City of New York. He thus should understand well the importance of intermodalism and the challenges that he will face.

I look forward to hearing from the nominees today.

The CHAIRMAN. Mr. Downey.

STATEMENT OF MORTIMER L. DOWNEY, NOMINEE TO BE DEPUTY SECRETARY OF TRANSPORTATION

Mr. DOWNEY. Well, certainly, Mr. Chairman, there is no shortage of needs on the highway side, on the transit side and on the aviation side, and we will do our best to make our case that those funds that have been collected from the users, earmarked for that purpose, are spent appropriately to rebuild our capital investment.

[The prepared statement, biographical data, and prehearing questions and answers of Mr. Downey follow:]

PREPARED STATEMENT OF MORTIMER L. DOWNEY

Mr. Chairman and members of the Committee, I appreciate your timely response in scheduling this hearing on my nomination to the position of Deputy Secretary of Transportation. I see this position as an enormous challenge but at the same time

a great opportunity. It is a challenge in the sense that the safety of millions of Americans rests on the shoulders of the Department of Transportation, as does the responsibility for the movement of goods and people that makes our economy strong. It is an opportunity because I expect, if confirmed, to be part of a team that will work with the Congress, with industry and with State and local governments to improve the Department's functioning and its contribution to the well being of our country.

Moving into the Transportation Department at this time is a very exciting prospect. The issues it faces are important ones, and the time is right to build on the Department's strengths and make changes where change will enhance its contributions. The President has given the general directions for that change and the Secretary of Transportation has set forth a specific agenda that will require all of our skills and attention. As it must, the agenda begins with safety in all of its facets, from the regulation of the automobile to the effective operation of the air traffic system to the protection of the public from such concerns as hazardous material spills. Issues of economic importance such as the health and competitiveness of our airline industry and our maritime industries are high priority matters.

We recognize the significance of Transportation's activities and programs on the nation's economy at a time when jobs and economic growth are of paramount importance. To this end, I expect to work with the Department's agencies to move their work quickly and effectively to contribute towards long term economic growth. The Department's activities can also generate real opportunities to apply the capabilities of our defense industries towards civilian needs. Making this a reality will take new partnerships and innovative thought as to the role of technology in such areas as high speed ground transportation.

At the same time, we must be sensitive to our stewardship of natural resources and the environment. The far reaching provisions of the Intermodal Surface Transportation Efficiency Act and the Clean Air Act Amendments can form the basis of a new model of responsible transportation development in partnership with State and local government.

Finally, two major themes of this Administration will affect everything we hope to do at Transportation. The clear call from the President and the Vice President to "reinvent government" and to use the skills and knowledge of government's employees to generate the ideas behind "reinvention" creates real opportunities to think through what the Department does, why it is done and how the missions can be retooled to meet the expectations of those we serve. Concurrently, the most important issue for all of us has to be people. Everything we do at Transportation relates to people and their needs. We must be sensitive to diversity, both in our work force and in the opportunities our activities create, and we must be always aware that the real purpose of all these activities is service to the public, not in an aggregate sense but in terms of individuals who must accomplish their daily tasks

I believe that my background and my education have prepared me well for addressing these challenges. I will soon complete my thirty-fifth year in transportation work, with most of those years spent in the management levels of complex multimodal transportation agencies. Most of my experience has been at the local level in agencies that deal directly with the travelling public, and in these agencies I have had the challenge of dealing with federal programs and regulations. At another time in my career, I served in Washington, first on Capitol Hill and then in the Executive Branch, and have first hand knowledge of how policies are developed and implemented at the national level.

I look forward to working with this Committee and with the Congress on the issues that face transportation and I am optimistic that we can make progress in these important areas through a cooperative effort. I would be glad to answer any questions that the Committee has at this time.

BIOGRAPHICAL DATA

Name: Downey, Mortimer Leo, III; address: 218 Dalmeny Road, Briarcliff Manor, NY 10510; business address: 347 Madison Avenue, New York, NY 10017.

Position to which nominated: Deputy Secretary of the Department of Transportation.

Date of birth: August 6, 1936; place of birth: Springfield, MA.

Marital status: Married; full name of spouse: Dorothea Joyce Downey; names and ages of children: Stephen Michael, 28; and Christopher Sean, 25.

Education: Phillips Academy, 1951–54, Diploma; Yale University, 1954–58, B.A.; New York University, 1962–66, M.P.A.; and Harvard Business School, 1988, Advance Management Program (certificate).

Employment: 6/58–12/58, Port Authority of New York and New Jersey, Management Trainee; 1/59–12/59, U.S. Coast Guard, Officer Candidate Ensign; 1/60–3/75, Port Authority of New York and New Jersey, Staff Assistant and Planning Administration Supervisor; 3/75–1/77, U.S. House of Representatives, Committee on the Budget, Budget Analyst; 1/77–3/81, Department of Transportation, Deputy Under Secretary and Assistant Secretary Counsel; and 4/81–present, Metropolitan Transportation Authority.

Government experience: In addition to my employment noted above, I have served on various Department of Transportation task forces (1971–75) and on the Infrastructure Subcouncil of the Competitiveness Policy Council (1992).

Political affiliations: As a condition of my employment at the Metropolitan Transportation Authority, I have not been permitted to hold political party offices over the last 10 years.

Political contributions: New York Democratic Party: 1984, $50; 1986, $15; 1987, $15; 1988, $60; 1989, $75; 1990, $75; 1991, $50; and 1992, $50. Nita Lowey for Congress: 1988, $100; 1990 $135; 1991, $50; and 1992, $100. Democratic National Committee: 1984, $250; 1985, $50; 1986, $50; 1987, $200; 1988, $225; 1990, $75; 1991, $300; and 1992, $100. Clinton/Gore Campaign: 1992, $500. Trudy Mason for NYS Assembly: 1992, $100; Sandy Galef for NYS Assembly: 1992, $100. Joel Schiavone for Governor (Connecticut): 1990, $100. Ossining Democratic Committee: 1984, $40 and 1988, $50. Moynihan for Senate: 1988, $100. Dukakis/Bentsen Campaign: 1988, $500. Bob Edgar for Senate (Pennsylvania): 1987, $35 and 1986, $50. Sandy Galef for Westchester Legislature: 1985, $25 and 1989, $35. Richard Ravitch for Mayor (New York City): 1989, $350. Brock Adams for Senate (Washington): 1986, $500. Neil Goldschmidt for Governor (Oregon): 1986, $200. Mondale/Ferraro Campaign: 1984, $550. Birch Bayh for Senate Debt Retirement (Indiana): 1985, $50. Goodman for County Executive of Westchester: 1985,$20

Memberships: American Society for Public Administration (past Pres., NY Chapter); American Public Transit Association; New York Municipal Forum (Board of Governors); New York Building Congress (Board of Directors); Transportation Research Board (former member, Executive Committee); Women's Transportation Seminar; Yale Club of New York City; National Democratic Club, Washington D.C.; Yale Sailing Association; Briarcliff Manor Health Club (Club Fit); St. Theresa's Church, Briarcliff Manor, New York; Block Island Resident's Association; Public Works Forum (New York City); Harvard Business School Club of New York; National Association of Rail Passengers; Andover-Abbott Alumni Association of New York; and New York University Alumni Council (Chair, Public Affairs and Government Relations Committee).

Honors and awards: Yale Club of New Haven Scholarship, 1954–58; Magna Cum Laude Graduate, Yale University; Member, Pi Sigma Alpha, National Political Science Honorary; New York University, Lepesquer Award for Highest Academic Standing, MPA Program; U.S. Coast Guard OCS–USCGA Award for Highest Academic Standing; and Urban Mass Transportation Administration Fellowship to Carnegie-Mellon Professional Program in Urban Transportation.

Published writings: Articles: "Transit Developments in Europe," published in Transit Journal 1974; "Factors Affecting Transportation Productivity," Traffic Quarterly April 1980; "Public-Private Financing of Transportation," Transportation Quarterly April 1984; and Contribution to Transportation Chapter of "Changing America," Citizens Transition Project, 1992.

QUESTIONS ASKED BY SENATOR HOLLINGS AND ANSWERS THERETO BY MR. DOWNEY

GENERAL

Question 1. How do you perceive the function of Deputy Secretary with respect to the modal administrations in the Department of Transportation (DOT)? Have you perceived any structural or institutional changes that are needed in this regard since you last served at DOT?

Answer. The Deputy Secretary can, in my view, play an instrumental role on behalf of the Secretary in assuring that the modal relationships work smoothly and produce sensible policy and results on issues that affect them. Secretary Peña has already institutionalized regular meetings of the Secretary's Office and modal senior officials to coordinate policy at a high level. I would expect the Deputy to play an important role in this group, also helping the Administrators obtain needed decisions, especially at the Office of Management and Budget and National Economic Council when routine contacts are not working. The Deputy Secretary can often be the point of contact or of influence to obtain high-level focus on issues that would

otherwise be submerged, such as expediting major procurements that often are critical to agency success, and can help set and follow up on a policy agenda.

One great structural improvement that has been put in place since I was last at DOT has been the creation of a high-level, formalized Office of Intermodalism, headed by the Associate Deputy Secretary. This is a new Office, and I would like to see it in action for a period of time before suggesting further organizational changes. This Office has great potential as a forum for cross-modal issues and coordination of major initiatives.

Question 2. Please described the most significant management challenges presently facing DOT, and how you intend to address these challenges, if confirmed.

Answer. We are fortunate to begin with a Department that generally gets good marks-for management, although I am aware that the Inspector General has documented cases where improvements can be made. The management area is of heightened importance now, because of the President's emphasis on providing the "customer" better service, combined with the President's commitment to doing more with fewer administrative resources. His goals for conducting the government's business more efficiently, and with less staff, is one of the most important challenges the Department faces.

If confirmed, I expect to make this area one of my high priorities. Specifically, the task is to think through what the Department does, why it is done, and how the missions can be retooled to meet the expectations of those we serve. The Department's current participation in the Vice President's National Performance Review is the foundation for that effort.

Another major challenge will be to put into practical use the fruits of new technology, where the President has placed great reliance for future economic growth. Secretary Peña has already transmitted a high-speed rail initiative to Congress, which will be considered by this Committee. Turning the proposal on paper into functioning new technology on the ground in partnership with states, localities, and the private sector will be a management challenge of the highest order, one the Department is eager to undertake.

Other significant challenges include the continued focus on an effective procurement and acquisition effort for major department investments, the achievement of diversity goals in employment and procurement, and effective, timely, completion of regulatory initiatives. The Department has mechanisms to encourage these processes and I will participate heavily in these processes.

Question 3. What are the key management and financial administration insights you have gained from your recent experience with the Metropolitan Transit Authority, and how will that experience make you a more effective Deputy Secretary, if confirmed?

Answer. While the scale of the two organizations—MTA and USDOT—is considerably different, they have some major similarities in terms of management and financial issues. MTA, like DOT, is a an aggregation of independently organized operations. Each of its various subsidiaries and affiliates has an independent history, statutory framework and separate financial identity. The MTA Headquarters, much like the DOT Secretary's office, has the challenge of providing leadership and direction so that common goals are achieved.

Many of the techniques that have worked in MTA are applicable, and in fact are present to a significant degree in DOT. The key factor in arriving at consistent progress among our various transportation agencies and responsibilities has been a shared plan for long term improvement, a recognition of capital needs and a timetable for meeting them, and a joint and agreed upon strategy for operational finances that reflected reality in terms of resource availability and priorities. Knitting all of these together was a recognition that accountability for results lies with those directly responsible for performance. Our operating Presidents, much like DOT's Administrators, are on the front lines, are accountable for results and should not be "second guessed" or "micro-managed" so long as the agreed-upon strategies are being carried out and the agreed-upon goals, including interim milestones, are being met.

This same theory of accountability applies at each level within organizations. Functional and project managers must be given the latitude to carry out their assigned tasks, but only after adequate time has been built in at the front end of activities and projects to define missions, generate realistic schedules and resource requirements, and set appropriate reporting systems in place. Within such a process, MTA (and I am sure DOT) can find it possible to achieve desired results, as well as making real savings in how work is done when the long term capital investments and the operating costs are taken into account.

A second major similarity between MTA and DOT (including those aspects of the national infrastructure for which DOT has responsibility) is the capital-intensive na-

ture of their systems. At MTA, we have been successful to a significant degree in renewing our capital plant through two basic strategies. First, we have been realistic in assessing our needs and making those assessments credible for public decision makers. Second, we have attempted to be creative in ways to finance those needs, using a wide variety of techniques appropriate to various types of assets, useful lives, and types of potential cost recoveries. I believe that a similar set of strategies will be applicable to the capital intensive systems owned or financed by DOT.

Finally, I think there is similarity in the need to set priorities and goals, directing one's efforts and resources in way that directs attention primarily to those actions that offer the most potential for meeting the major goals that have been set.

Question 4. If confirmed as Deputy Secretary, what policy areas do you anticipate will be among your highest priorities? What are your overall goals and objectives?

Answer. If confirmed, my role will be one that fulfills the Secretary's needs and priorities as he sees them. It is clear that the highest priority at the Department is the continued emphasis on day-to-day safety of all transportation systems. Improvement of our major procurements, such as the current Advanced Automation System at the FAA, would be a major objective for the Deputy Secretary. With President Clinton's emphasis on improved service to the "customer" across government, I also believe there will be a greater need for anticipatory and close interagency coordination, such as the Department of Transportation coordinating with the Department of Energy and the Environmental Protection Agency, which soon may achieve cabinet status. My long experience in the "retail delivery" of transportation services convinces me that the way we go about our business in government contributes as much to ultimate success as the introduction of dramatic new initiatives. I would see my role in this regard as streamlining our methods at DOT.

Question 5. What are your views with respect to the appropriate role of the public sector in fostering and ensuring the safety of our national transportation system? What new opportunities do you envision for public/private partnerships in transportation?

Answer. In response to Question 5, there has always been and will remain an appropriate role for the public sector in ensuring the safety of our transportation systems for their customers. While some may argue that past regulation has been too prescriptive or otherwise heavy handed, I am convinced that the private sector cannot self-police itself entirely because of the pressures of competition. At the same time, Secretary Peña has stressed the need for quicker regulatory decisions and sensitivity to the situation of regulated parties. I agree with this approach to safety regulation.

I believe that there are a number of potential approaches to the public-private partnership, and that many of them have real potential for improving service to our customers and to the American economy. In a broad sense, the entire range of transportation services in this country represents a very real partnership between the private and public sectors, and a workable one. Unlike many economies, the private sector in America is dominant in many aspects of transportation. We do not have nationally owned railways or airlines, and even where we do have ownership of some services (such as Amtrak) we seek to have the service operate on a business-like fashion.

At the same time, many of the key facilities, such as roadways, airports, port facilities or public transportation systems, are provided by public, or in some cases, quasi-public entities. Even here, the vast majority of funds used in these highly capital-intensive investments are ultimately the responsibility of the users, through trust funds, revenue bonds, or other similar devices.

Additionally, there are obviously a variety of private opportunities generated each time public investments are put in place. More often than not, even where public operations of some facility or service make sense, it is supported by a supply sector that operates in the private sector to undertake construction, build equipment and provide a variety of support services. These arrangements, too, can properly be described as a form of public-private partnership.

In general, it is my view that the current mix of responsibilities works well, and that there is room for a variety of successful approaches to be implemented as may make sense in particular situations. I do not see a need for the Federal government, in particular, to be directive or prescriptive as to how services are provided or what model of private and public roles make sense. Rather, the Federal government ought to be supportive of local decision making and the tailoring of specific outcomes that make sense.

SURFACE TRANSPORTATION

Question 6. Please provide your views concerning the requirements for capital investment in the Nation's surface transportation infrastructure. How can DOT ensure that its public-sector investment decisions are made wisely?

Answer. According to the Department's most recent report on the conditions and performance of the Nation's highways, bridges, and transit systems, which was issued last January, the total annual investment to maintain overall 1991 highway and bridge conditions and performance is $51.6 billion through the year 2011. The cost to maintain transit condition and performance, including the cost to meet new statutory obligations to serve disabled Americans and improve vehicular emissions and continue recent growth, is estimated at $3.9 billion annually through 2011. More transit investment will be needed if the goal is to re-balance the modal split and reflect the realities of constraints in highway expansion.

In 1991, $36.1 billion was spent for highway and bridge capital improvements and $4.3 billion was spent for capital improvements to transit Those figures represent investment needs and expenditures from all sources. Such estimates need to considered very carefully, and the DOT staff indicates it will be reviewing the methodologies used in developing these estimates, but it's clear that our capital investment in surface transportation infrastructure has been falling below the levels needed to maintain conditions and performance. That is part of the reason why President Clinton proposed his program to Rebuild America and the reason why increases in surface transportation investment are prominent features in his proposal. Not only must we ensure that investment levels increase, but, as you suggest, we must invest wisely, and that is a priority for this Administration. Tools provided in the 1991 ISTEA will help state and local governments make the necessary choices in their investments, and the Department will work with them to facilitate the process.

The Department recently submitted a report to Congress suggesting allocation of transit new starts funds based on the factors set out in the ETA Act, such as cost effectiveness, environmental considerations, and local financial commitment, key factors in ensuring wise investment. An interagency team is at work looking at principles for ensuring wise investment in infrastructure on a government-wide basis.

Question 7. Please describe your general philosophy with respect to the economic regulation of the surface transportation modes. Do you believe, as a general matter, that DOT should intervene before the Interstate Commerce Commission on matters of policy affecting the economic regulation of the rail, intercity bus, and trucking industries?

Answer. The deregulation movement began in the Carter Administration, but was a bipartisan effort, including passage of legislation affecting air, truck, and rail services. I am aware of the significant economic gains from deregulation claimed by its proponents in government, industry, and academic circles. However, I am also aware that these gains have not been uniform throughout the industry. For example, some trucking companies, and their employees, have suffered because they could not adapt quickly to a deregulated environment.

I am also familiar with claims that economic productivity will be enhanced by further deregulation at both the Federal and State levels. But I do not consider myself an expert, and before deciding on a plan of action concerning changes to economic regulation of the surface modes, I want to examine all the issues and impacts on shippers, communities, and employees. As far as reregulation is concerned, Secretary Peña said in his confirmation hearing that reregulation is not on his radar screen; it is not on mine either.

The Staggers Rail Act of 1980 appears to have been working very well, and I would not anticipate any major proposals for change in the rail freight sector. With regard to participation at the ICC, I believe that each issue needs to be examined for its merits, and that the Department should participate on especially important issues.

Question 8. Increasing attention lately has been focused on whether antilock brakes and other safety improvements should be mandated for the trucking industry. What are your views on this question, and how, as Deputy Secretary, will you reconcile the overlapping policy interests in this area of the Federal Highway Administration (FHWA) and the National Highway Traffic Safety Administration (NHTSA)?

Answer. With any new technology, the concerns must include whether it will perform adequately in the environment of over-the-road trucking and whether the safety benefits we can expect from it will justify its costs. Our attitude should be one of cautious optimism in dealing with new technology. I understand that the new technology has overcome past problems, that NHTSA is winding up operational

tests, most of the industry has been involved, and the agency is close to starting rulemaking.

NHTSA and FHWA have been working together to enhance trucking safety; the former with regard to the design and performance of new vehicles and the latter with regard to the equipment and operation of existing vehicles. I would expect to use the position of Deputy Secretary to ensure that the spirit of cooperation continues to prevail.

Question 9. Greyhound Lines plans soon to introduce a computerized reservations system for its intercity bus service. What critical policy issues, if any, in the intercity bus industry should DOT monitor with respect to this development?

Answer. The intercity bus industry is an extremely important one, especially in rural America. We must be particularly concerned about the continuing availability of regular route intercity bus service to important segments of the population—the young, the elderly, and those with below average incomes—who have few viable alternative means of travel. Along with Secretary Peña, I believe that the intercity bus industry has a vital role to play, and it is important that we maintain and encourage a safe, efficient, and connected national intercity bus network. Without thwarting sound business practices, we want do what we can to promote cooperation and connectability between Greyhound and the other carriers, and avoid the sort of competitive problems that have occurred with the CRS systems in the airline industry.

Question 10. What are your views concerning the shipper hazardous materials (Hazmat) registration program instituted by the Research and Special Programs Administration? Should an exemption be provided for foreign-based hazmat shippers?

Answer. I understand that the Research and Special Programs Administration has implemented the Congressionally mandated hazmat registration program in a timely manner. Although more than 26,000 offerors/shippers and carriers of hazardous materials have registered, RSPA believes that there are thousands more who should be registered but have not done so. I am told RSPA plans to increase outreach efforts and also will be relying on civil penalty authority to encourage additional registrations.

Question 11. Please provide your views as to what steps DOT should take in order to foster intermodal synergies between and among the various modes.

Answer. Secretary Peña has set intermodal synergy as a priority in conducting the Department's business, and I share this priority. I believe that this goal can best be accomplished through improved communication among the customers and providers of transportation services, largely at the local level where problems can best be resolved. The provision of "seamless" transportation, whether for passengers or goods, boils down to common sense and consideration for what the customer seeks. The Department of Transportation can best facilitate this process by listening to its "customers," whether they are users of the services, providers of service or recipients of grants, and providing the flexibility in Department programs to meet "customer" needs. Much of this communication can best take place at the local and regional levels in the context of real world problems and solutions. If confirmed, I would expect to participate in those discussions and to encourage the necessary flexibility in Departmental thinking.

Question 12. In the area of grade-crossing safety, how will you work to ensure that the overlapping jurisdiction of the Federal Railroad Administration (FRA) and FHWA does not impede continued progress and attention to this important safety area?

Answer. If confirmed as Deputy Secretary, I would expect to have regular contact with both the Federal Railroad Administrator and the Federal Highway Administrator. I would make it my business to see that their agencies work together to reduce the number of casualties from rail-highway grade crossing accidents.

The FRA has authority over measures the railroads take to enhance the safety of their operations at grade crossings, while the FHWA works largely through grants to states and localities to identify and implement grade crossing safety countermeasures.

FRA has recently been engaged in rulemakings to ensure the proper operation of railroad safety equipment at grade crossings. I would press to see that such rules continue to receive high priority. The Department could also use the statutory powers it has in awarding grants to ensure that grade crossing safety remains a major consideration with states and localities. I would also expect to work through organizations like Operation Lifesaver and the National Safety Council to remind the public of the need for caution at grade crossings.

Question 13. What do you see as the appropriate role of intercity passenger rail in the national transportation system? What mission do you envision for Amtrak in this area during the remainder of this decade?

Answer. I believe intercity rail passenger service is a valuable, environmentally sound, integral component of our transportation system. The Department encourages its growth and development in a manner consistent with available budgetary resources. I support Amtrak's continued progress in the efficient delivery of service and its efforts to meet its capital needs. If those efforts are successful, Amtrak should be capable of recovering a larger share of its operating cost from users.

Secretary Peña and the new Administration place a special emphasis on rail passenger service improvements, including high speed rail in high travel density intercity corridors, through the Administration's high speed ground transportation initiative.

Question 14. With respect to the magnetic levitation (maglev) prototype development program, what do you believe are the key institutional issues to be resolved in order to ensure success of the program as authorized by the Intermodal Surface Transportation Efficiency Act (ISTEA)?

Answer. Looking beyond the immediate time horizon, MAGLEV offers opportunity for technological advance in the provision of high-speed ground transportation services in certain markets. Testing its potential as called for in the ISTEA will require continued inter-agency cooperation, and may also require some modifications to assure an effective test of this new technology.

MERCHANT MARINE

Question 15. How do you view the value of maintaining a U.S.-flag shipping fleet? Do you believe that we need a maritime policy that will preserve our existing U.S.-flag shipping fleet and spur the growth of the fleet?

Answer. The U.S.-flag merchant marine is an important contributor to our national defense capability as well as overall economic security. Given the benefits of an active merchant fleet, a maritime policy that strives to preserve our existing U.S.-flag fleet is desirable. However, to the extent that policy is built upon direct Federal subsidies, then the cost of those subsidies has to be weighed carefully against the benefits. I have not previously been involved in matters involving the merchant marine subsidy program and will make if a high priority to become better informed on the subject.

Question 16. Reform of the U.S. maritime industry has become the most significant issue facing that industry. The largest U.S.-flag carriers have stated they will be forced to register their vessels in foreign countries and crew them with foreign crews if reform is not attained this year. At his confirmation hearing before this Committee, Secretary Peña stated that maritime reform was one of his top two priorities. What actions will DOT be pursuing in this area?

Answer. In light of the recognized problems of the maritime industry and its importance to the national economy and defense, it is disappointing that budgetary constraints will preclude an Administration initiative on maritime reform this year. The Administration clearly recognizes that something basic is needed if we are to prevent the U.S.-flag merchant fleet from disappearing. The decision, based on particularly trying budget circumstances this year, does not mean that maritime reform is being abandoned. I'm sure Secretary Pea intends to keep maritime reform high on his list for action. He believes it is essential that U.S. carriers and other transportation modes be able to compete globally.

I understand that DOT staff are now waiting on completion of two studies, the Shipyard Study in October and the DoD Requirements Analysis in August, that together will provide the basis for another look at the maritime issues.

Question 17. The Jones Act mandates that trade between two U.S. ports be on U.S.-flag, U.S.-crewed, and U.S.-built vessels. What is your view of this law?

Answer. Insofar as I understand its purposes, I support the Jones Act and believe it should be retained.

Question 18. The U.S. cargo preference laws require that all military cargo and up to 75 percent of other U.S. government-impelled cargoes be carried on U.S.-flag ships. There was concern recently that the Administration would seek to waive these requirements for the food aid that is being shipped to Russia. What is your view of the importance of the cargo preference requirements generally, and as they relate to the food aid shipments to Russia?

Answer. Cargo preference is important for the strengthening of U.S.-flag merchant shipping and the interest of both the national economy and national defense. It also helps protect our ocean commerce from foreign domination. creates jobs for Americans and improves our balance of payments position. Shipments to Russia are being funded by U.S. dollars and it is reasonable to expect that the U.S. merchant marine industry should benefit from this movement of cargo.

Question 19. The Airport Noise and Capacity Act of 1990 established a national phase-out date for Stage 2 aircraft. What do you believe is the responsibility of DOT in assuring compliance with that date? How would you describe the authority of airports to control the noise environment?

Answer. The Airport Noise and Capacity Act of 1990 (ANCA) struck an important balance between noise relief and aviation activity. It is the responsibility of DOT to maintain that balance and recognize and mediate circumstances that could interfere or delay ANCA compliance.

Noise relief afforded by ANCA through scheduled phaseout of Stage 2 aircraft will be costly to the air carrier industry, but will ultimately reduce the population affected by significant levels of airport noise to minimal levels. The FAA indicates that the air carrier industry is on schedule for meeting the ANCA requirements, despite undergoing a period of financial stress.

The authority of the airports to control the noise environment is as defined by ANCA. Airports wishing to pursue local noise or access restrictions, through other than voluntary agreements, must comply with substantial regulatory requirements of notice and analysis for Stage 2 restrictions. Airports seeking Stage 3 restrictions must also meet notice and analysis requirements, as well as obtaining DOT approval of the Stage 3 restriction. All restrictions must continue to comply with preexisting law. I support the continued effort towards voluntary agreements to resolve these issues at a local level.

Question 20. Secretary Peña recently announced that bilateral aviation issues would be considered by a group within the White House, which will include representatives of DOT. How will this approach affect negotiations?

Answer. We expect that the interagency approach to consideration of aviation issues will have a positive effect on negotiations. As the U.S. is confronted with difficult negotiating issues vis-a-vis our trading partners or our own constituents, the interagency group will assure that all interests of the Administration are reflected and balanced in the Department's important decisions. When there is a conflict between agencies, it will be resolved so that the U.S. negotiators can speak confidently with one voice and support the national interests in negotiations.

Question 21. A member of the House recently suggested an "investment criteria" for a range of transportation projects, including airport grants. The airport grant program has a series of set-asides created by the authorizing committees. Is DOT concerned that the investment criteria could lead to earmarking of the airport grant program, something not previously done?

Answer. DOT welcomes the interest of Congress in utilizing formal investment criteria to allocate scare infrastructure investment dollars, but believes that Federal agencies and airport sponsors should retain flexibility in deciding what capital investment projects should be undertake. Benefit/cost analysis/and/or formal benefit/cost-based investment criteria have been used in evaluating FAA's major Facilities and Equipment (F&E) investments for the last two decades. Generally, the earmarking of discretionary funding interferes with the best use of scarce resources and should not be employed. Also, the Clinton Administration has undertaken a government-wide analysis of how federal programs should make infrastructure investments, an analysis that we should all have available as we address this issue.

Question 22. There has been a great deal of emphasis on creating new transportation systems, like high-speed rail. How do you see this new technology affecting the airline industry?

Answer. In specific circumstances, high-speed rail can be an effective substitute for aviation service, particularly in corridors up to 600 miles in length where airport or aviation system capacity is near its limits and additional capacity may be infeasible. One instance where this has occurred has been in the Washington-Boston corridor, where a significant portion of the intercity traffic is carried by rail. The Empire Corridor from New York to Buffalo, and especially its New York/Albany segment, has seen significant growth with help from New York State. As I see it, the choice as to how markets are served should generally be driven by market and efficiency considerations, including the consideration of costs of activities. If the technology and potential of high-speed rail is understood, a choice can be fairly and accurately made.

The Administration's high-speed rail proposal specifically addresses the potential for service in specific circumstances for this reason. I understand the bill (S. 839) is now pending before this Committee and that Secretary Peña will testify on it later this week.

Question 23. Will you exercise oversight over the Federal Aviation Administration's Advanced Automation System Program to ensure that it proceeds on sched-

ule? What steps do you believe are needed to ensure that the necessary improvements are made to the air traffic control system?

Answer. I will, if confirmed, exercise oversight over the AAS program both through the Transportation Systems Acquisition Review Council (TSARC) which as Deputy Secretary I will chair and through regular briefings. However, OST should not be involved in the day-to-day management of the program. Rather, the FAA must maintain contact by establishing realistic schedules, managing to these schedules, and limiting the number of changes that are made during implementation.

I am advised that FAA has taken steps to reform this process by establishing detailed guidelines for management of major acquisitions which should result in more clearly defined requirements, realistic schedules, and better cost control. I will oversee this process through the Department's TSARC.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

Question 24. As you know, in the last Congress, authorization legislation for National Highway Traffic Safety Administration (NHTSA) was incorporated into ISTEA. The legislation requires DOT to carry out various programs and rulemaking proceedings involving vehicular safety. Passage of this legislation represented the first time that NHTSA had been authorized since 1982. (A) Please describe your general view on rulemakings and the role you believe the Congress should have with respect to DOT's rulemaking authority and activities. (B) How do you believe NHTSA's role in promoting highway safety can be improved? In particular, in which specific areas do you envision a greater involvement from NHTSA?

Answer. First, I would like to say that I am comfortable with the importance of the issues for which NHTSA has begun rulemakings as a result of ISTEA. These are important safety issues that need to be investigated. As for the role of Congress in rulemakings, I find it unfortunate that the Congress felt that it could not rely on the Department to initiate or complete regulatory action on its own. This implies a lack of confidence in the Department's judgments and its priorities. I will work to improve relations between the Department and the Congress, so that we move forward efficiently.

In addition to its important work in vehicular safety, NHTSA can improve on its highway safety mission by focusing on those activities that have shown the greatest promise to reduce death and injury. For example, among the most effective highway safety efforts would be to promote increases in the number of vehicle occupants who regularly wear their safety belts and to reduce the incidence of drunk driving.

Question 25. Please discuss generally your views regarding regulation of the auto industry. (A) What are your views regarding the role of NHTSA in the development and implementation of policies and regulations concerning safety and fuel economy standards. (B) What direction do you believe NHTSA should follow with regard to formulating an approach toward fuel economy standards in the future?

Answer. In light of the importance of energy conservation and environmental concerns, one must support the concept of improved passenger car and light truck fuel efficiency. However, there are a number of studies, including studies performed by NHTSA, that raise concerns about the safety implications of smaller and lighter vehicles. I believe that NHTSA's role in the safety and fuel economy debate will be to contribute its technical expertise and experience in this area so that we can find ways to increase energy efficiency without compromising safety.

Fuel economy standards are inevitably tied into broader policy concerns regarding energy conservation goals for the country as a whole, reducing America's dependence on foreign sources of energy, reducing greenhouse-gas emissions, improving economic and jobs growth, and enhancing the competitiveness of the domestic auto industry. A number of agencies besides NHTSA will be involved in formulating the Clinton Administration's approach toward future fuel economy standards. In general, I believe we need to look at cost-effective ways of increasing energy conservation, while also considering environmental factors and the health of the domestic auto industry.

QUESTIONS ASKED BY SENATOR DANFORTH AND ANSWERS THERETO BY MR. DOWNEY AND MR. KAPLAN

RENO AIR

Question 1. Earlier this year, Reno Air, a new airline flying from Reno to six West Coast cities, announced that it would begin flying a Reno to Minneapolis route. This announcement prompted Northwest Airlines, which is based in Minneapolis, to declare that it would duplicate Reno Air's service from Minneapolis to Reno and from

Reno to Los Angeles, Seattle and San Diego at prices below those of Reno Air. Northwest had abandoned the Reno-Minneapolis route in 1991 as unprofitable. Reports in the March 29 Wall Street Journal and the April 5 New York Times indicate that Secretary Peña met with Northwest's President, John Dasburg, and stated his intention to begin a DOT investigation of Northwest Airlines with regard to Reno Air. Northwest subsequently dropped its plans to fly from Reno to the West Coast. Were you involved in DOT's analysis of Northwest Airline's actions? Does DOT have guidelines when an investigation of anti-competitive action in-the airline industry should be launched?

Downey Answer. I was not involved in the Department's actions in this situation, although I was aware of the press reports and that personnel of the Department were discussing the issue. At this point I am not familiar with whether the Department has investigatory guidelines for these types of investigations, but I do know that there is a legal office, called the Office of Aviation and Proceedings, that I am told focuses on just these sorts of issues. As a general matter, I believe that strict enforcement of anti-competitive action is a necessary component of a system that relies on market forces.

Kaplan Answer. I had the opportunity to sit in on several of the presentations and discussions regarding this issue. It is important to note that, while the Department has its own authority in this area, this particular matter included direct involvement of the Justice Department. It is my understanding that there is an ongoing effort to consider guidelines in this area.

THE AIRLINE PREDATORY PRICING ACT OF 1993

Question 2. I have introduced S. 770, the Airline Predatory Pricing Act of 1993, which would provide DOT with a procedure and standards to handle anti-competitive pricing conduct in the airline industry. Once a complaint that an airline has engaged in predatory pricing is filed, DOT would have seven days to determine whether to issue a preliminary cease and desist order. DOT would have 90 days to determine whether to make the order permanent. The legislation also provides objective standards as to what constitutes predatory or destructive pricing. Would an established procedure and specific standards, such as those provided in S. 770, be helpful to DOT to settle predatory pricing claims?

Downey Answer. In an area of long-established administrative practice such as this, where the financial prospects of various air carriers can be substantially affected by new standards and processes, I believe that the committee hearing process could be particularly beneficial to determine the effect of these proposed statutory changes. Under this approach, the Congress and Administration would have the benefit of hearing-from all sides as they developed positions on the legislation.

Kaplan Answer. While I have not had the opportunity to review the existing process in detail, I am advised that the General Counsel's legal staff points to both Section 411 of the Federal Aviation Act of 1958 and to the-Department of Justice's broad authority in this area as a substantial basis of existing authority to combat predatory pricing. Clearly, the Department seems interested in fostering healthy, lawful competition.

FOREIGN INVESTMENT IN U.S. AIRLINES

Question 3. On March 15, Secretary Pea approved a $300 million investment by British Air in USAir. This investment gave British Air 19.9 percent of USAir's voting stock. British Air has indicated that it would like to increase its voting stock stake to 44 percent within five years. Under existing law, foreign entities many only own up to 25 percent of a U.S. airline's voting stock. Secretary Pea has announced his intention to begin negotiations on a new bilateral aviation agreement between the United States and the United Kingdom. The British have stated that they want the new bilateral agreement to allow British citizens to acquire a higher percentage of voting stock in U.S. airlines. The major objective of the United States in a new bilateral agreement is greater access to Heathrow Airport for U.S. airlines. I have introduced S. 771, the Airline Investment Act of 1993, which would allow citizens of a country to acquire up to 49 percent of U..S. airline's voting stock, if that country negotiates a liberal bilateral agreement with the United States. If Secretary Peña had this authority, would it be useful in his negotiations with the British on a new bilateral agreement?

Downey Answer. As Secretary Peña has stated publicly, his objective is to win better bi-lateral agreements with other countries, and that the objectives of so-called "open skies" and our valid objectives in a particular case can be complementary. It appears that the new negotiations with the British are beginning well, and dearly this issue is of interest to the British.

Kaplan Answer. The negotiation of bilateral and multilateral agreements is known to be a highly specialized area, often requiring the long view to reach success. I have been advised that issue is one which will receive attention from the new Airline Study Commission. There are a series of fundamental policy questions that range from national security to our ability to compete globally.

Question 4. On May 11, the New York Times reported that the Clinton Administration "has decided to invite air traffic controllers dismissed in their 1981 strike to reapply for their former jobs * * *" Has such a decision been made? What is the rationale for this change in our long-standing policy on rehiring controllers who struck illegally?

Downey and Kaplan Answer. As far as we are aware, a decision has not been reached by the White House. Secretary Peña did coordinate the process among the cabinet heads of presenting the various options for a decision, but we are not prepared to comment further at this time.

While we are not privy to the rationale underlying this policy process, it is dear from press reports that the President has indicated that the passage of time alone justifies giving the issue a new look.

S. 412, THE UNDERCHARGE EQUITY ACT OF 1992

Question 5. Senator Exon has introduced S. 412, the Undercharge Equity Act of 1992, to end the costly litigation involving bankrupt trucking companies and shippers. By some estimates, outstanding undercharge claims may cost shippers as much as $32 billion. Nine Commerce Committee Members and I have cosponsored Senator Exon's bill. As Deputy Secretary and General Counsel of the Department of Transportation, will you review S. 412 and give us the benefit of your support for this needed legislation to end the harm these undercharge claims are causing, particularly to the many small businesses who are the subject of these suits?

Downey and Kaplan Answer. We recognize that the shipper undercharge issue is a serious problem, one which is taking attention away from the day-to-day operations of thousands of businesses, large and small. We need to address the problem, which will entail seeking an equitable way of resolving past undercharge claims and preventing new ones.

We are aware that the Department is active in assessing Senator Exon's bill in the 103rd Congress as the follow-on to extensive analysis of the Senator's and Chairman Norman Mineta's efforts in this area in the 102d Congress. We understand that Chairman Mineta just recently introduced a bill as well. This is a particularly knotty issue, involving the Interstate Commerce Committee and the courts as well, and it would be to everyone's interest to see a resolution. Secretary Peña is aware of the issue and the legislation and wants to play a constructive role in resolution of the dispute. If confirmed, we would be active participants in the development of the Department's position on this or related legislation. It is our sense that the Department supports an effort, involving all interested parties, to get this matter resolved.

The CHAIRMAN. We have no proposed plan for the maritime industry. And I have also had an opportunity to discuss this with the Secretary. What you have, in essence, is the presentation of a maritime plan by the administration in the closing months here last year with no money. Perhaps it is because there is no money that there is no plan. But you cannot stand for the demise of the Nation's maritime industry to come on your watch. We have got to have some kind of plan up here, some kind of money. It is absolutely necessary.

I might suggest that—I notice in defense, the 050 function as you and I would refer to it, has a lot of money—today the buzz word is "competitiveness," so they have a $1 billion line item in there to commercialize technology. Is that not wonderful that the Defense Department now is going to get into the commercialization of technology?

If they can find $1 billion for that, they can find $1 billion for American flagships that are so necessary to get us to a Desert Storm or wherever. And that is very important. The Coast Guard has to go to the Defense Department each year, as you well know,

in order to carry out its functions. So, if you can address those matters, with your experience in the budget workings, it would be a big help to us.

I think you and the other two nominations now before us are excellent appointments.

Let me yield to my colleague, Senator Pressler.

Senator PRESSLER. Let me ask just one line of questioning here. And that is the relationship between the Department of Transportation, the FAA, and the National Transportation Safety Board. I know we have a lot of these players getting involved. We had a fatal small aircraft accident recently that claimed the lives of eight distinguished South Dakotans, including our Governor, George S. Mikelsen, and it turned out that on at least two occasions, the FAA had ignored urgent warnings from the National Transportation Safety Board regarding the safety of the propeller assembly model that happened to be on the plane carrying Governor Mikelsen and others.

And just last March, the National Transportation Safety Board Chairman, Carl Vogt, warned that the failure of the propeller assembly could result in a catastrophic accident. But no warning was ever issued by the FAA.

Now, in your position at the Department of Transportation, what role do you feel the DOT should play in its relationship with the FAA and the NTSB?

Mr. DOWNEY. Well, first of all, that was a very tragic event, and we have already expressed our condolences to the families of the people who were lost. In terms of lessons learned, I think it tells us: one, that the Congress was correct years ago in separating the Safety Board from the Department, so that it would make independent scientific recommendations for the various agencies in DOT.

In my role, I will do my best to make sure that those agencies listen to the Safety Board, that the Safety Board and FAA and the other agencies of DOT communicate and reach quick decisions on what is best for the safety of the transportation system's users.

Senator PRESSLER. Now, what is the current relationship between the DOT and the FAA?

Mr. DOWNEY. The FAA is a agency within the DOT. Its administrator reports to the Secretary.

Senator PRESSLER. So, we do have responsibility fixed?

Mr. DOWNEY. Yes.

Senator PRESSLER. Now, do you feel that the FAA, like the NTSB, should be an agency independent of the DOT?

Mr. DOWNEY. I do not believe so. I think there is a good argument for FAA being inside the DOT to give it accountability to a Cabinet Secretary and to assure that its transportation investments and decisions mesh with other transportation decisions for the other modes.

Senator PRESSLER. I am sure that the FAA maybe had reasons—it did have a similar plane crash up in Utica, and it did have two letters—it seems unusual, the NTSB sent two letters and one warning and marked them urgent or some level, and the FAA did not act on them, even though they act on about 90 percent of the warnings sent by the NTSB. Why do you suppose that was?

Mr. DOWNEY. I do not know the answer specifically to that. I do know that they are responsive in the vast majority of cases, and I think it is important that they do respond to urgent safety requirements of the Safety Board.

Senator PRESSLER. I am mainly interested in learning the interrelationship of all these agencies, and whether we need all of them, if they are all functioning, and if the public interest is being served. So, we have the DOT, the FAA—well, of course, the FAA is part of the DOT, it reports to the Secretary.

Mr. DOWNEY. Yes, it reports to the Secretary.

Senator PRESSLER. So, basically, we are dealing here with the Department of Transportation and the National Transportation Safety Board. What about that relationship? Of course, the NTSB probably sends a letter on everything that it hears, and the FAA cannot act on everything, but is the NTSB functioning well, do you think?

Mr. DOWNEY. I believe it is, from my experience, both in DOT 12 years ago, as well as experience with them in the transit field. They do a good job of investigating accidents. They do a good job of recommendations. And, for the most part, the things they recommend are appropriate improvements to safety.

Sometimes there are resource issues involved. Sometimes there are issues of balance. But, for the most part, the things they recommend are of high importance.

Senator PRESSLER. Yes. Well, I am not one to point fingers of blame at people when something goes wrong, without digging into it a little bit. And that is what we are trying to do. But the standard that FAA has when they respond to NTSB seems to be a very inconsistent pattern. And you will be overseeing FAA, basically, will you not?

Mr. DOWNEY. Yes, Senator.

Senator PRESSLER. I mean, the head of FAA will be reporting to you probably, essentially.

Mr. DOWNEY. To the Secretary.

Senator PRESSLER. Would you assure me that you will look into this, and maybe you can submit for the record here your analysis of what happened in this case, and whether or not the FAA acted properly? Could you do that for this committee?

Mr. DOWNEY. We could do that, yes.

Senator PRESSLER. I would not want to ask you to do it now, but what is the timetable on this nomination? When is it going to the floor? Can we get something by late today?

Mr. DOWNEY. We can get something.

The CHAIRMAN. Get it late today. We want to put it out this week.

Senator PRESSLER. OK, great. I just want to look at it. Or you can give it orally right now if you want to.

Mr. DOWNEY. I would prefer to provide it later today, if we could.

[The information referred to follows:]

LETTER FROM STEPHEN H. KAPLAN AND MORTIMER L. DOWNEY

MAY 19, 1993.

The Honorable LARRY PRESSLER,
U.S. Senate,
Washington, DC 20510

DEAR SENATOR PRESSLER: We appreciate the opportunity we had Monday to discuss with you the aviation accident April 19 that took eight lives, including Governor Mickelson's, and the steps we can take to prevent another such tragic accident. Small aircraft safety is and should be a priority at the Federal Aviation Administration (FAA).

You expressed particular concern that the interaction between the FAA and the National Transportation Safety Board (NTSB) may have involved bureaucratic friction that interfered with issuance of the appropriate airworthiness directive as soon as there was a basis for one. We have looked into the chronology in this case and found that the relationship worked as it was intended under statute, and that both agencies appear to have done their best with the information they had available. This is by no means suggests that further steps would not improve safety for the public.

The NTSB was created by Congress to investigate transportation accidents, make determinations of probable cause, and make safety recommendations to the regulating agency, in this case the FAA. Congress separated the NTSB from the Department in 1975 to help assure the independence of its accident findings and safety recommendations. The responsibility for issuing safety regulations and directives is lodged separately with the FAA, freeing the NTSB from any of the balancing of issues implicit in the regulatory process, but the FAA has a statutory duty to consider and respond to all NTSB recommendations on air safety. The record shows a very high level of positive response by the FAA to NTSB recommendations, with more than 90 percent of its urgent recommendations, and more than 80 percent of all its recommendations, adopted by the FAA. DOT's Inspector General has examined the FAA's record of response and found that, except in the case of the lowest priority recommendations, the FAA has, on average, responded to the NTSB more rapidly than its guidelines specify for response.

Without making any ultimate judgment about the causes, we would like to review the facts leading up to the April 19 crash. The first evidence FAA had of a problem with the propeller in question was the loss of a propeller in flight from an MU–2B–60 aircraft September 27, 1991, followed by a safe landing. The specific model propeller had been in service for 20 years with millions of flight hours accumulated. The NTSB'S investigation led to an August 1992 recommendation to the FAA that it join with the propeller manufacturer in developing a nondestructive inspection technique to examine the inner propeller surfaces for the fatigue cracking that appeared to be the cause of the failure. The NTSB recognized that disassembly to examine the inner areas could lead to maintenance-induced damage that be more serious than the cracking if sought to locate. NTSB also recommended requiring an inspection schedule of blades in service over 3,000.

The FAA responded quickly to the August recommendation by advising the NTSB on October 26 that a review of relevant information was underway. Although not mentioned in the October 26 letter, the FAA had begun discussing a nondestructive inspection technique, as recommended by the NTSB, with the manufacturer.

On January 4, 1993, the FAA provided its full response to the NTSB. The agency had examined all the relevant historical data on the propeller type and similar propellers in use over three decades and found no comparable case of cracking. The manufacturer's testing showed that stress levels of the propeller area in question were acceptable, and that no metallurgical discrepancies were found in the hub material. FAA reviewed the service history of the propeller and contacted propeller overhaul shops to gather any additional anecdotal information. No cracking at all had been reported in thousands of normal maintenance sessions. Because this led the FAA to conclude the 1991 case was an isolated incident, the FAA decided not to issue a mandatory inspection directive at the time. Significantly, no method had been (or yet has been) developed to permit inspection that avoids disassembly and the possibility of maintenance-induced damage. The FAA indicated it was continuing to monitor the service performance of this propeller. On March 4, the NTSB responded and reiterated its view that a nondestructive inspection methodology should be developed and applied. The NTSB also noted concern that the FAA had not seen a need to review the design and fabrication of similar propeller types.

The FAA and the manufacturer have continued the search for an inspection method that avoids disassembly and the risk of induced damage. Many methods, including x-ray, eddy current, and ultrasonic techniques, have been evaluated and found

unsatisfactory. The manufacturer has concluded that current technology is not at a stage where inspection can be accomplished without disassembly.

When the April 19 crash occurred, involving an identical model aircraft, the FAA responded within 10 days by establishing that a pattern of fatigue cracking existed, and that inspection involving disassembly must be undertaken. In view of the potential for damage in the inspection, the FAA has required that the inspection only be conducted at the manufacturer's factory laboratory. This step is intended to maximize speed and consistency of data collection as well as minimize the possibility of maintenance-induced damage. The FAA continues to work closely with the NTSB on this issue, but the engineering and other data do not suggest an explanation for the cracking and fatigue.

In our review of these facts, it appears that the two agencies performed appropriately. Nonetheless, we look forward to working with Congress specifically on how the area of small aircraft safety might obtain greater emphasis. The accident statistics demonstrate that the safety record has steadily improved. The FAA believes that the high profile it gives small aircraft safety, such as its small airplane airworthiness reviews and its positive safety outreach program, contributes to the improvement. However, we should continue to pursue further improvement.

We share Secretary Peña's firm belief and the fundamental premise that the Department of Transportation is committed first and foremost to safety in the day-to-day operations of all modes of transportation. He strongly supports the NTSB in its role in the area and intends to monitor the response of all DOT agencies to the NTSB'S recommendations.

In closing, we hope to have the opportunity to work with you and the Aviation Subcommittee on the continuing issue of small aircraft safety.

Sincerely,

STEPHEN H. KAPLAN.
MORTIMER L. DOWNEY.

Senator PRESSLER. OK. Thank you.

The CHAIRMAN. One final point, Mr. Downey. You might as well get the Secretary's input on the National Commission for a Competitive Airline Industry. I think the public service, the origin of airlines and airline travel should not be disregarded in the sense of being competitive.

You know, that was the idea about deregulation, that they were going to be so competitive, that fares would be down, the service would be increased—and it has gone in the other direction. I get a Government rate, but for my wife, it takes $636 to travel from here to Charleston, SC. And you can look in the morning paper and travel to Frankfurt, Germany, and back, from Dulles, for $279.

You begin to see the ludicrous nature of what has happened. Then you have the entire set of new issues when the regulated airlines begin to take over the deregulated. We have deregulated deregulators, so now we are going to the foreign-subsidized regulated airlines to invest in—and I do not say, necessarily, take over, but with that influence, I can tell you now, they are going to allocate to the foreign lines the lucrative routes that are making the money.

We are so oversmart in Congress on how to run business that we are running it out of business. I can tell you that now. The Department of Transportation will want to have its input in there when they have this quick study, so that when the study is reported they do not say, oh, wait a minute, we did not think of this or that.

We welcome you, and we appreciate your willingness to serve. We will keep the record open for any questions, but I would like to close it out and report it to the floor this week for confirmation.

Mr. DOWNEY. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you for being here this afternoon. Now we have one distinguished Congresswoman and one distinguished Congressman, Pat Schroeder and Mr. Skaggs to introduce Mr. Kaplan.

We welcome each of you to the committee. Congresswoman Schroeder, we would be delighted to hear from you.

STATEMENT OF HON. PATRICIA SCHROEDER, U.S. REPRESENTATIVE FROM COLORADO

Ms. SCHROEDER. Well, thank you very much, Mr. Chairman and Senator Pressler. It is indeed an honor to be here, although I must say I am a little conflicted by this, because we see this as a great brain drain from our great city and State, if you decide to send him forward. But we think it is——

The CHAIRMAN. They can spare him, can't they? I remember Herman Talmadge said it would increase the intelligence levels of both areas. [Laughter.]

Ms. SCHROEDER. Well, I am not so sure in ours that it may not lower ours in Denver, but it will certainly help the District. And so I really am very honored to be here to tell you a little bit about Steve Kaplan.

I think if you looked at his résumé, all you have to do is look at page 2 and find out that he was the counsel and one of the main people involved in redistricting in our State in 1980. And I think anyone who can come out of redistricting and everybody thinks is fair, you do not really need to say much more, because it is one of those things that is not pleasant anywhere. And yet Steve came out and everybody felt he had done just an absolutely terrific job.

As you can see, he was a terrific scholar on his undergraduate work. He has been a very distinguished lawyer. He has had great public experience in Denver working for the mayor, working in his cabinet, and working on transportation problems with our airport.

So, you name it and he has been readily involved. And as I say, we really hate to see him go, because he has been such a terrific asset. But I cannot think of anybody better in the Department of Transportation, so I am deeply honored to be here. You cannot go wrong with Steve Kaplan.

And I thank you for letting me appear.

The CHAIRMAN. Well, we thank you. Congressman Skaggs.

STATEMENT OF HON. DAVID E. SKAGGS, U.S. REPRESENTATIVE FROM COLORADO

Mr. SKAGGS. Thank you, Mr. Chairman, Senator Pressler. I am very pleased to be able to join Pat Schroeder in commending to the subcommittee and the full committee Steve Kaplan as general counsel for the Department of Transportation.

He is a man I have enjoyed working with and learning from. He is a colleague in the Colorado bar and I think he would bring a very distinguished repertoire of talents and experience to this post.

As Pat indicated, he not only has an exemplary academic and professional record, but as with the nominee for Deputy Secretary, Steve has really exemplified a commitment to public service at all levels, State, local, and Federal, with some experience on the Hill which will stand him in good stead. And I am delighted to add my

voice in support of Steve and hope that you will act favorably on his nomination.

Thank you very much.

The CHAIRMAN. Very good. You both are welcome to stay with the nominee. Or if you have other engagements, we understand.

Ms. SCHROEDER. Thank you very much.

The CHAIRMAN. Thank you both very, very much. Mr. Kaplan, you have heard the concerns of the committee with respect to the previous nominee in maritime and aviation and other matters, specifically the legal concerns between the National Transportation Safety Board and the Federal Aviation Administration.

Let me yield to Senator Pressler.

Senator PRESSLER. Yes. Well, I guess you heard my earlier question on that matter. And we are trying to find out the relationship between the two. Maybe you are not familiar with all the facts, but there were three letters that went warning about a certain type of propeller hub and no warning was ever given to the plane owners.

And indeed, the NTSB predicted an additional catastrophic crash, unless something was done. And now such a directive has been issued. But there were two, at least two crashes that we know of that occurred.

What is your—how do we deal with that problem?

STATEMENT OF STEPHEN H. KAPLAN, NOMINEE TO BE GENERAL COUNSEL OF THE DEPARTMENT OF TRANSPORTATION

Mr. KAPLAN. Senator, during the transition I had the opportunity with now Secretary Peña to spend a fair amount of time with the NTSB and explore the relationship between that board and the FAA and the Department of Transportation.

And it is clear that there is a good, ongoing relationship. They have different roles, different responsibilities. I cannot tell you what the facts are in this specific tragedy. But I do know, as you indicated, that a vast majority of the recommendations made to the FAA by the NTSB are followed.

Senator PRESSLER. Yes, about 90 percent of them are followed. I was curious as to why this one was not, after 2 or 3 years.

Mr. KAPLAN. I cannot answer that. And as you heard, Mr. Downey indicated that is being reviewed.

Senator PRESSLER. OK. I guess he will send over a statement. I would ask you to send—why don't you join in his statement or send your own over later today. I am not going to hold anything up here, but I want to call people's attention to this because there is concern among small aircraft owners as to whether there are other letters that NTSB has sent that are not acted on. Of course, they cannot not act on all of them.

But what is their standard over there? And as I understand it, that office appoints directly, reports directly to the Secretary, so we are very interested in seeing an answer.

Mr. KAPLAN. And you will have one. And, as you know, being from Colorado, it is not unlike South Dakota. There are many small planes and unfortunately, in our mountains there are all too many accidents. So, it is something for which we have a special sensitivity.

Senator PRESSLER. That is all I have.

The CHAIRMAN. Very good. I see where you heretofore had the Secretary Peña as your client. You have got him this far. I guess you can take him even further.

Mr. KAPLAN. I hope so, with your support, Mr. Chairman. Thank you.

The CHAIRMAN. I think he will be lucky to have you. Thank you very much, Mr. Kaplan. And what we will do is keep the record open for any questions by our colleagues and try to report it out this week.

Mr. KAPLAN. I will be pleased to respond. Thank you very much.

[The prepared statement, biographical data, and prehearing questions and answers of Mr. Kaplan follow:]

PREPARED STATEMENT OF STEPHEN H. KAPLAN

Mr. Chairman, Senator Danforth and Members of the Committee. It is indeed an honor to appear before you as you consider my nomination to be General Counsel of the Department of Transportation. It is a privilege to have been nominated by the president, and I am truly excited about the opportunity to serve again with Secretary Peña, who is providing dynamic, effective and creative leadership at the Department.

Much of my professional life has been dedicated to public service, having served as Legislative Assistant to a Member of Congress, as a First Assistant Attorney General for the State of Colorado, and as Denver City Attorney. I have seen the importance of transportation to urban families trying to get their children to health care clinics, and to potato farmers trying to ship their crops across the country. I was directly involved in the new Denver airport project, and thus understand what can happen when a national transportation strategy comes together with a strong community consensus. I have learned that transportation decisions can and must be made with increasing concern for our environment. I understand that transportation can be the lifeblood of communities, and can lead to economic development and job creation.

Of paramount importance, however, must always be concern for safety—safety of consumers, communities and employees.

It is transportation which fuels our hope for the future—hope for an improved quality of life, and for a safer, more efficient transportation system that will enable us to compete internationally, with strong competition at home. Putting people first is the foundation for successful transportation policy.

The General Counsel's Office can play an important role in these issues, initially by providing the highest quality legal advice and representation. We can offer leadership to see that Congressional mandates are addressed more expeditiously, and that common sense is a part of the regulatory process. We can be creative in seeking solutions to complex problems, and we can listen thoughtfully to those who have ideas and concerns. We can work more closely with the Justice Department and other agencies such as EPA to craft the most effective Federal position. We can encourage problem-solving partnerships with the private sector as we search for new approaches and directions. We can take steps to foster competition and to protect the consumer, just as we can take steps to enhance safety in transportation. We can be even more sensitive to the relationship between transportation and our environment. We can address difficult procurement issues and contracting problems. And we can negotiate effectively, aggressively and creatively.

The issues facing the transportation industry, as well as consumers, grow increasingly complex. It is only by working with the industry, and with industry employees, that we can understand the opportunities of the future, of defense conversion, of research and high technology, and of competing in a global economy.

I look forward to working with the Committee and its highly professional staff. If there are any questions, I would be pleased to respond.

BIOGRAPHICAL DATA

Name: Kaplan, Stephen Howard; address: 818 Marion, Denver, CO 80218; business address: 370 Seventeenth Street, 47th Floor, Denver, CO 80202.

Position to which nominated: General Counsel, Department of Transportation; date of nomination: April 22, 1993.

Date of birth: May 23, 1947; place of birth: Tulsa, OK.

Marital status: Married; full name of spouse: Jeanne L. Slavin; names and ages of children: Frances Leslie Kaplan, 13; and Michael Ethan Kaplan, 10.

Education: Harvard College, 9/65–6/69, A.B. Cum Laude; and Harvard Law School, 9/70–6/73, J.D.

Employment: 1/90–present, Davis, Graham & Stubbs, Denver, CO, Attorney (of counsel), (Note: I am currently on leave from my law firm, serving as an intermittent consultant to the Department of Transportation); 9/90–12/90, Hensel Phelps Construction Co., Greeley, CO, Consultant; 8/83–8/90, City/County of Denver, Denver, CO, City Attorney; 8/81–8/83, Kelly, Haglund, Garnsey & Kahn, Denver, CO, Associate, Partner; 8/76–7/81, Colorado Attorney General Office, Denver, CO, Assistant, First Assistant Attorney General; 8/73–6/76, Congressman James R. Jones (D-OK), Washington, DC, Legislative Assistant; summer 1972, Fried, Frank, Harris, Shriver & Jacobson, New York, NY, Summer Law Clerk; summer 1971, U.S. Department of Housing and Urban Development, Washington, DC, Intern/Assistant to the Under Secretary; and summer 1969, Metro Taxi, Cambridge, MA, Taxi Driver.

Government experience: Deputy, Clinton-Gore Transportation Transition Cluster, 1992; City Attorney, City and County of Denver, CO, 1983–90; Assistant and then First Assistant Attorney General, State of Colorado, 1976–81; Legislative Assistant, Congressman James R. Jones (D-OK), 1973–76; Chairman, City and County of Denver Ethics Advisory Board, 1983–90; Member, State Board on Teacher and Professional Services Standards, 1992–93; Member, Denver Housing Trust Council, 1986–90; and Member, Denver Community Historic Preservation Task Force, 1991–92.

Political affiliations: 1992: Colorado Democratic Party (Clinton-Gore), $250; Colorado Democratic Party, $50; Campbell for Senate, $150; Lamm for Senate, $100; Callihan for Congress, $100; DeHerrera for County Commissioner, $50; Peggy Lamm for State House, $25; Skaggs for Congress, $50; Committee for DeGette, $35; and Committee for Judge Phillips, $35. 1991: Wirth for Senate, $250; Colorado Democratic Party, $200; Early for Mayor, $275; Sandos for Council, $100; Reynolds Campaign Committee, $50; Linkhart Committee, $50; Crider for Auditor, $100; and Doerring for Council, $50. 1990: Peña for Denver, $21; Friends for Carl Levin, $20; Gantt for Senate, $25; Colorado Democratic Party, $20; and Woodward for Attorney General, $100.

1989: None. 1988: Peña for Denver, $71; Mares for State House, $25; Pascoe for State Senate, $25; District 6 Democrats, $10; Ezzard for Congress, $25; and Skaggs for Congress, $25. 1987: Peña for Denver, $521; Colorado Democratic Party, $70; Webb for Auditor, $25; and Early for DA, $30. 1986: Colorado Democratic Party, $65; Edens for State Senate, $25; Committee for Wirth, $100; Committee for Romer for Governor, $50; Jones for Senate, $100; and Campbell Campaign, $15. 1985: None. 1984: AFL–CIO COPE, $20; Flahive for State House, $25; Dick for U.S. Senate, $25; and Denver Democratic Party, $25. *Note:* This reflects a review of check registers, which may be incomplete for the earlier years. It also does not include contributions to ballot issue committees that did not seem requested.

Memberships: Colorado, Denver, and Oklahoma Bar Associations; Trustee, Denver Zoological Foundation; Board Member and Vice President, Denver Children's Museum; Board Member, Safe House for Battered Women; Colorado Anti-Defamation League (Board); Colorado American Jewish Committee (Board); Capitol Hill United Neighborhood (Member); Citizens for Quality Schools (Board); Dora Moore Elementary School Collaborative Decisionmaking Team (Business Representative); Worldport Partners, Inc. (Board); Denver Athletic Club; Denver Museum of Natural History (Member); Denver Art Museum (Member); and Denver Bar Association Committee on Minority Firms—Pilot Project.

Honors and awards: Harvard University's Henry Russell Shaw Fellowship (1969–70); Harvard College National Honorary Scholarship (1965); and Metro City Attorneys' Award for Management (1985) and for Legal Jurisprudence (1987).

Published writings: Generally this has involved continuing legal education presentations, primarily on ethics for public sector attorneys. These outlines are made available to participants but are not published in the traditional sense. In the fall of 1992, I wrote an article for the Colorado Real Estate Journal on due diligence issues in purchasing land near the new Denver airport.

Questions Asked by Senator Hollings and Answers Thereto by Mr. Kaplan

GENERAL

Question 1. Please describe your goals and objectives if confirmed as General Counsel. What will be your priorities for action in this position?

Answer. My first objective, if confirmed would be to provide the highest quality legal counsel to the Secretary and to oversee the legal activities of the Department on his behalf. I believe an active legal stance can substantially improve agency performance and avoid pitfalls that distract from the primary objectives of the Department. The General Counsel can also contribute directly to achievement of the Secretary's policy objectives. I am aware that the General Counsel oversees a broad range of regulatory, enforcement, and legislative activity that has a substantial effect on policy, and thereby directly affects the regulated parties and the public. Therefore, I would work especially hard to see that the President's goal, to serve the "customer" better, is fulfilled in these areas. In addition, I would work to see that common sense is a part of our strong, creative, clear, and effective legal efforts.

Question 2. Given the size of the staff of the Office of General Counsel and its many important responsibilities, have you considered the adequacy of resources within the General Counsel's Office and, if so, have you identified potential measures to address any shortfalls?

Answer. I have been advised that the General Counsel staff has been decreasing somewhat over the past several fiscal years, despite the continuing responsibilities placed on the office. The President has asked that the agencies undertake a real effort to "work smarter" with existing resources, and I take that as the challenge in making the General Counsel's Office work well. I would seek additional resources through the budget process if I learn that this is justified, but I understand the budget constraints, and the goal of doing more with less.

Question 3. When do you foresee DOT issuing final drug and alcohol regulations as required under the Omnibus Transportation Employee Testing Act of 1991?

Answer. I know the Secretary has been briefed on this rulemaking and has directed that the staff expedite completion of final rules. While I am not in a position to predict the Department's schedule for the rule, I would, if confirmed, have a major responsibility for this project. I would strive to fulfill the statutory mandate quickly, because I know the Secretary has made it a clear priority to get all mandated rules completed on time. This is a highly complex matter, involving the issuance of a group of 18 proposed rules in December, for close to seven million safety-sensitive transportation industry employees. This rulemaking would receive active attention and follow-through.

SURFACE TRANSPORTATION

Question 4. Secretary Peña stated at his confirmation hearing that DOT will give a high priority to providing Administration leadership to end the truck "undercharge" litigation crisis. If confirmed, what specific steps will you take as General Counsel to develop an Administration policy and provide leadership on this issue?

Answer. Several Supreme Court decisions during the past three years have made it clear that a legislative solution to the "undercharge" crisis is needed. I look forward to consulting with all the interested parties to this issue, as well as carefully examining the several bills—including Senator Exon's bill (S. 412)—that address the issue. Secretary Peña is seeking a solution that would not only provide an equitable resolution of pending undercharge claims, but would also ensure that the problem does not recur. If confirmed, I would look forward to working with you and the other members of this Committee toward an equitable resolution.

Question 5. The Interstate Commerce Commission (ICC) is currently assessing its administrative implementation of the filed tariff doctrine, including the prospects for electronic tariff filing. What role do you envision DOT taking with regard to developing a policy addressing these and other critical issues affecting trucking economic regulation?

Answer. I would assume that the Department's position with respect to electronic tariff filing at the ICC will flow logically from its position on the broader issue of a legislative solution to the shipper undercharge problem and on further deregulation of trucking. It makes no sense to contemplate spending millions for a new electronic tariff filing system if the tariff filing requirement itself might need to be reconsidered. Before we can decide what the tariff filing system of the 21st century will be, we need to ascertain what the tariff filing requirement of the future should be.

Question 6. If confirmed, what DOT policy or regulatory action, by DOT will you advocate, if any, in response to the Supreme Court's recent decision in *CSXT* v. *Easterwood*?

Answer. *CSXT* v. *Easterwood* involved the question of whether, pursuant to the Federal Rail Safety Act of 1970, regulations promulgated by the Federal Highway Administration and the Federal Railroad Administration preempted certain state laws relating to rail crossing safety and allowable train speed. The Supreme Court held that DOT's regulations preempted state law (1) as to rail-highway crossings only where the crossings have been improved with federal funds, and (2) as to train speeds, in all circumstances. The conclusions reached by the Court were the same as those urged by the United States in its filing before the Court The significance of this decision to railroads is that they may regain liable under state law to provide a safe crossing in circumstances where crossings have not been improved pursuant to the federal program.

In light of the Court's decision, I would expect that DOT will encourage increased participation by railroads in our important rail-highway crossing program in order to improve more crossings, thereby enhancing the over-all safety of rail-highway crossings nationwide. If confirmed, I would urge FRA and FHWA to review the decision and, together with my office, to determine an appropriate regulatory approach consistent with the Court's conclusions. Given the Court's holding on the effect of express preemptive action by the Secretary, I anticipate that future regulatory actions by the Department under the Federal Rail Safety Act, will be taken in a manner that indicates those instances in which the Department intends its regulations to preempt state law.

Question 7. During the previous Administration, the Federal Railroad Administration consistently missed deadlines to issue rules in a number of critical safety areas mandated by Congress. If confirmed as General Counsel, what steps will you take to ensure regulatory compliance by all DOT agencies with the statutory mandates of Congress?

Answer. This is a top priority for the Secretary. In my preliminary meetings with members of the General Counsel's Office, they have already undertaken a review, with recommendations, as to how the Department can improve m this area. One of my goals would be to realized demonstrated improvement in this area. I also believe that we need to have more ongoing dealing with the appropriate committee should problems arise or recommendations be appropriate.

Question 8. In the area of railroad labor relations, will you, if confirmed as General Counsel, advocate that DOT take an active role in any reassessment of railroad labor laws now on the books? Do you believe that DOT should intervene before the ICC in proceedings addressing railroad labor protection and similar issues in order to represent the Administration's views in this area?

Answer. Any reassessment of railroad labor laws will need the active involvement of rail labor and management I believe that the Secretary's position would be that the Department should assist the parties in such an endeavor, and I agree that that could lead to the most constructive outcome. I think the Department should closely monitor all proceedings before the ICC and become involved in cases raising major transportation issues, including those of railroad labor protection.

Question 9. The ICC has undertaken a comprehensive review of the intercity bus industry, focusing on the nature of the competitive relationship between and among Greyhound Lines and the independent carriers. In order to preserve and enhance intercity bus service, what role do you, if confirmed as General Counsel, see DOT taking in matters which may be before the ICC and the courts?

Answer. I am fully aware of the importance of the intercity bus industry. Regular route intercity bus service is essential for key segments of the population—the young, the elderly, and those with below average incomes—who cannot avail themselves of other forms of transportation. Along with Secretary Peña, I believe that the intercity bus industry is a critical element in the transportation system, and it is important that we maintain and encourage a safe, efficient, and connected national intercity bus network.

Each matter should be examined on its merits, giving due regard for the need to encourage a "seamless", interconnected transportation service without intruding on a company's right to make reasonable business decisions. We have already offered the ICC our cooperation in their comprehensive review of the intercity bus industry, including sharing our information and expertise. We should participate at the ICC in significant cases with national importance.

Question 10. During Secretary Peña's confirmation hearing, the Committee expressed its concern that many of the key safety provisions of the Hazardous Materials Uniform Transportation Safety Act of 1990 have not been implemented. What

will you do to fulfill Secretary Peña's commitment to investigate this problem and meet the statutory deadlines set by Congress?

Answer. Since his confirmation hearings, I am aware that Secretary Peña has expressed to the Department's top managers his great concern about meeting statutory deadlines for rules, and has directed that prompt action be taken to complete all actions mandated by, among others, the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA). I am told DOT has already implemented most of the HMTUSA requirements, and I would, if confirmed, work with the agencies to implement the Secretary's mandate to expeditiously meet statutory deadlines.

Question 11. If confirmed as General Counsel, how will you advise Secretary Peña on the question of whether federal law should explicitly provide for competition to the National Railroad Passenger Corporation (Amtrak) with respect to the operation of new proposed high-speed rail services?

Answer. While I have not considered the issue in depth, which it deserves, it would appear that there is something to be said for maintaining a coordinated rail passenger system, including the high-speed components, under one carrier, particularly where Amtrak already operates multiple trains per day. On the other hand, I am told that the process whereby Amtrak competes for operating commuter service has been healthy, and something similar may be appropriate for intercity service when a State provides a significant share of operating and capital expense, particularly if Amtrak does not already operate frequent service.

I understand that the Administration's high-speed rail bill permits the State or States proposing a corridor to propose who the operator will be.

Question 12. The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) mandated that DOT take a number of specific steps to initiate a magnetic levitation (maglev) prototype development program, including establishment of an interagency maglev prototype office, among other requirements. How do you see the role of DOT General Counsel in ensuring DOT's compliance with this law and other laws, given that DOT to date has not complied with several of these statutory requirements?

Answer. As I understand it, Congress prohibited use of funds provided under DOT's FYI 1993 Appropriations Act for compliance with those ISTEA requirements. However, President Clinton has proposed in his FY 1994 Budget that the Department begin development of the maglev prototype generally in line with the approach outlined in ISTEA. If Congress agrees with that proposal in the FY 1994 Appropriations Act, DOT will begin development of the prototype, including establishment of the maglev office. As General Counsel, I would work with my colleagues to ensure compliance with statutory direction in this and all other areas of DOT activity.

Question 13. Please provide your view, if confirmed as General Counsel, of DOT's position and policy involvement with respect to assumption of liability by operators of proposed new high-speed rail services?

Answer. I am not particularly familiar with this issue, but I understand involves the freight railroads' concerns about tort liability under State law. Given that States will be the Department's partners in developing high-speed rail corridors, it seems appropriate for the States that develop high-speed rail corridors to address this issue with the railroads involved in their corridors before the Federal Government considers addressing State tort law in this area.

Amtrak currently has contracts with the freight railroads over which it operates that specify each entity's liability in the event of an accident If Amtrak is the operator, I would assume that, should a different arrangement be desired for high-speed operations, the parties will negotiate it The Department should become involved in developing policy in this area only if it becomes apparent that it is a stumbling block to the development of these high-speed systems.

MERCHANT MARINE

Question 14. Reform of the U.S. maritime industry has become the most significant issue facing that industry. At his confirmation hearing before this Committee, Secretary Peña stated that maritime reform was one of his top two priorities. If confirmed as General Counsel, are there policies and programs in whose implementation you would be involved to promote the U.S.-flag fleet?

Answer. In light of the recognized problems of the maritime industry and its importance to the national economy and defense, it is disappointing that budgetary constraints will preclude an Administration initiative on maritime reform this year. The Administration clearly recognizes that something basic is needed if we are to prevent the U.S.-flag merchant fleet from disappearing. The decision, based on particularly trying budget circumstances this year, does not mean that maritime reform

is being abandoned. I'm sure Secretary Peña intends to keep maritime reform high on his list for action. He believes it is essential that U.S. carriers and other transportation modes be able to compete globally.

I understand that DOT staff are now waiting on completion of two studies, the Shipyard Study in October and the DoD Requirements Analysis in August, that together will provide the basis for new work. I would want to be directly involved in this important area.

Question 15. The U.S. cargo preference laws require that all military cargo and up to 75 percent of other U.S. government impelled cargoes be carried on U.S.-flag ships. Are there ways to better ensure that these laws are enforced?

Answer. Enforcement of the preference laws is the responsibility of the various government agencies. The Maritime Administration (MARAD) has been mandated by the Congress to monitor and report on compliance achieved by the government agencies. Therefore, it is incumbent on the agencies to assure tight controls on compliance. The real problem is perceived to be the additional costs which may be warranted but which the agencies do not want to bear, and their support for this program is not strong.

AVIATION

Question 16. The Reagan and Bush Administrations all too often cited "difficulties" in issuing regulations. What steps do you believe are needed to streamline the rulemaking process? How would such steps impact aviation rules?

Answer. As part of the Department's "Reinventing Government" review, a task force is looking to see if changes in the structure of the rulemaking process can help improve the timeliness of rules. The most important step we can take is for management to commit to meeting rulemaking deadlines and issuing all rules in a timely manner. The Secretary has made this commitment and has communicated it to rulemaking officials throughout the Department.

I am told that officials of the Office of Management and Budget have said that, in the Clinton Administration, the OMB rulemaking review function will not be used to delay or frustrate agency implementation of statutory mandates. This will be a great gain for all rulemaking, not just aviation.

The Department's major task in aviation rules is to enhance the safety of the traveling public. Unnecessary delay in improving safety is unacceptable to the Department, and the Federal Aviation Administration is working hard to shorten the time between the initiation of a rulemaking project and its transmission to the Secretary for approval.

It is necessary to recognize that, in rulemaking, an agency must study complex technical and economic issues thoroughly, seek out and respond fully to comments from interested members of the public, and weigh careilly the policy consequences of its regulatory actions. The agency must do so in the context of many priorities chasing finite resources. The commitment to doing the job in a timely manner should not be at the expense of doing the job right

Question 17. The Department recently took action to prevent Northwest Airlines from adversely affecting the services of a new entrant air carrier. Do you foresee that DOT will continue to enforce aggressively its existing authority under section 411 of the Federal Aviation Act?

Answer. I am advised that the Department worked closely with the Justice Department on this matter. However, given the Department's own, independent authority, and the need to assure strong competition and lower the barriers to new entrants, all with a paramount concern for safety, I would expect the Department to scrutinize these matters on a case-by-case basis as they arise to assure compliance with the law.

Question 18. The Acting Administrator of the Federal Aviation Administration (FAA) recently made suggestions for change in the passenger facility charge program. Under existing law, the FAA has significant authority to implement this program. Is it your view that such changes are consistent with existing law?

Answer. I understand that the interpretation of the 1990 Passenger Facility Charge legislation is one of great complexity, and has already been the subject of many lawyer hours. Rather than add to the potential for confusion by voicing views immediately, I believe I should take the time to review the language and the arguments in detail before venturing an opinion. This is especially true in an area where bondholders and new or pending bond issues can sometimes be greatly affected by any apparently new information. Because of my own experience in Denver, I am particularly sensitive to this issue.

Question 19. Recent press reports suggested that DOT was considering changes to the current buy-sell rule for slots and to the route sale process. Routes and slots

are now treated essentially as corporate assets, rather than government-granted rights to serve the public. What role do you believe is appropriate for DOT in reviewing sales of government rights? Are you considering repeal of the buy-sell rule?

Answer. I understand that several members of Congress have asked DOT to reexamine the way slots are allocated. Also, Secretary Peña has said how important it is that we make sure we are addressing issues in the best possible way. DOT and FAA staff are therefore looking into whether it would be feasible to conduct a study of the slot issue. Given the tentativeness of the assignment at this point, it would be unwise to speculate on the future status of operating rights as a "government" or "corporate" asset There is an ongoing review in the specific context of U.S.Air's routes to Heathrow, which it had to divest pursuant to the consent order from the Justice Department, and the unique characteristics of this matter overall may have generated some of this discussion.

NATIONAL TRANSPORTATION TRAFFIC SAFETY ADMINISTRATION

Question 20. In your answers to the Committee's questions, you mention that you understand the issues pertaining to the relationship between state and local governments and the Federal Government in implementing policies and programs. With particular respect to highway traffic safety initiatives what difficulties do you believe exists for states implementing these types of programs? How can the federal government better assist the states with their highway and vehicle safety programs?

Answer. When the federal government adopts national standards or deadlines, it does so with an eye toward federalism. The dynamic created can often be positive and constructive. But the federal government can also assist by making its regulations dear, by priority grant money and technical assistance to states and local entities where appropriate, and by working with states and local officials to fashion constructive approaches that comply with the letter and spirit of the law.

Question 21. How do you plan to ensure that the National Transportation Traffic Safety Administration properly carries out its regulatory responsibilities and meets the deadlines for the requirements established under ISTEA?

Answer. Secretary Peña has been dear in his instructions to top managers that fulfillment of statutory mandates in the regulatory area particularly is one of his top priorities. I recognize that the General Counsel has a great responsibility in this area to follow through. If confirmed, I expect to make the completion of mandated rulemakings a top priority.

STATEMENT BY SENATOR BEN NIGHTHORSE CAMPBELL—MONDAY, MAY 17, 1993

Mr. Chairman, I am most pleased to have the opportunity to recommend to the committee my good friend, Mr. Stephen Kaplan. Mr. Kaplan's nomination nearly completes President Clinton's team at the Department of Transportation. I am eagerly looking forward to working with what can only be described as a remarkably talented team.

I know Mr. Kaplan best from his work with former Denver mayor and current Transportation Secretary, Federico Peña. Mr. Kaplan served as a member of Mayor Peña's cabinet and was instrumental in many of the Peña team's major successes. The soon-to-be-open Denver International Airport, Denver's new convention center, and the attraction of the National League's new Colorado Rockies to Denver can all be credited to the hard work performed by Federico and his staff. I know Mr. Kaplan's work with the Peña administration was essential to these successes.

One of the most impressive accomplishments of the Peña administration, beyond the extraordinary improvements in the Denver and Colorado economies, was the refinement of the city's ethics guidelines. With Mr. Kaplan's guidance, the Mayor developed policies limiting the outside employment practices of staff attorneys; as a result, the professionalism of the Mayor's Cabinet, and the public trust in the office, grew dramatically. The quality and diversity of candidates for positions within the Mayor's office also grew as a direct result of these policy changes.

Mr. Kaplan, who received both his undergraduate and law degrees from Harvard University, has extensive experience both within and outside government. As a former Capitol Hill staffer, Mr. Kaplan understands, I am sure, how this institution works and will be receptive to policy decisions coming from this committee.

Thank you again, Mr. Chairman, for the opportunity to address the committee. I look forward to Mr. Kaplan's speedy confirmation and to working with him on developing and refining our nation's transportation policies.

The CHAIRMAN. Thank you very, very much. By the way, I welcome your wife, Jeanne. She is in the audience there. We are de-

lighted to see her. And Senator Campbell also wanted to be here and he has a letter for the record, which we will include at this point.

And incidentally, Senator Brown also wants a letter in the record. You have to be introduced right. You have got something going here.

[The information referred to follows:]

LETTER FROM SENATOR HANK BROWN

MAY 14, 1993.

The Honorable ERNEST HOLLINGS,
U.S. Senate,
Washington, DC 20510

The Honorable JOHN DANFORTH,
U.S. Senate,
Washington, DC 20510

DEAR FRIENDS AND COLLEAGUES: Regrettably, I cannot join you toady to introduce Stephen Kaplan as General Counsel-designate of the U.S. Department of Transportation. While you will have the opportunity to discuss Steve's qualifications and plans for the Department of Transportation, I would like to share with you some background concerning his service to the people of the State of Colorado.

Steve's record of service has established him as a positive force in the lives of others. After obtaining a law degree from Harvard and completing 3 years service to Congressman James R. Jones, Steve served as a First Attorney General in Colorado.

In 1983, Steve Kaplan moved to City Hall where he joined now Secretary of Transportation Federico Peña's Mayoral Cabinet as City Attorney of Denver. As City Attorney, Steve managed an office of approximately 60 attorneys and 35 support staff. His office represented Denver in a complex and diverse range of issues. He was responsible for the legal matters related to the new Denver International Airport, construction and operation of the Colorado Convention Center, and acquiring the Colorado Rockies, Colorado's first Major League Baseball Team.

Additionally, Steve Kaplan represented Denver on city contracts, zoning and land use, employment, and Minority Business Enterprise and Women's Business Enterprise programs. During his tenure, he expanded the diversity of the City Attorney's Office. Moreover, Steve was able to attract attorneys from major law firms throughout Colorado.

As Denver's City Attorney, Steve Kaplan had the opportunity to learn about the importance of our Nation's transportation infrastructure, the relationships between Federal, State, and local governments in transportation issues.

After retiring as City Attorney in 1990, Steve Kaplan, his wife Jeanne, and their two children have remained in Colorado. Steve also served as "Of Counsel" to a major Denver law firm where he worked on public finance, public-private projects, public policy, State and local government law, construction and other public contracts. Most recently, he served as a Deputy on President Clinton's Transition Transportation Center.

I know you join me in welcoming Steve Kaplan in Washington, DC. Thank you for giving me the opportunity to introduce him to you.

Sincerely,

HANK BROWN,
U.S. Senator.

Mr. KAPLAN. Thank you very much. I look forward to it.

The CHAIRMAN. Thank you very much.

We will have Senator Feinstein, if she can—I thought I saw her. There we go. Mr. Huerta is the Associate Deputy Secretary for Intermodal Transportation.

Senator Feinstein.

STATEMENT OF HON. DIANE FEINSTEIN, U.S. SENATOR FROM CALIFORNIA

Senator FEINSTEIN. Thank you very much, Mr. Chairman, members of the committee. I am very pleased to be able to appear be-

fore you today to introduce Michael Huerta. He is a fellow native Californian. To become Associate Deputy Secretary of Transportation and Director of the Office of Intermodalism. I guess that is a new word for the 1990's.

As I understand it, the goal of this division of the Department of Transportation is to focus attention of how to coordinate all forms of transportation, to move people and goods in the most energy-efficient and cost-effective manner possible.

I believe you have found the right person for the job. Michael Huerta, by way of his training and hands-on experience, is well suited to this assignment. He is someone who looks for innovative, practical solutions to improve mobility and productivity and then moves forward with specific plans.

In San Francisco and New York, Mr. Huerta has worked for the last 7 years on the specific task of moving goods from ships from our ports to grocery stores in the homes of our communities.

During the last 4 years, as executive director of the Port of San Francisco, Mr. Huerta managed an agency with an annual operating budget of $35 million and a staff of more than 240 people. He completed the port's first strategic plan in its 130-year history and he undertook a staff reorganization to emphasize customer service.

Maybe one of the best indications of his innovative and practical problem-solving skills resulted in a financially prudent trade of public lands for privately held property in San Francisco. This was actually something, as a matter of fact, that I began, when I was mayor of San Francisco.

But he completed the negotiations for the city and county to transfer lands making way for a 315-acre residential and commercial development known as Mission Bay. In exchange, the port received lands necessary for expansion of its container facilities, valued at substantially more than the lands being transferred.

Similar achievements have marked his career before his post in San Francisco. From 1986 to 1989, he served as the commissioner—that is the department head—for New York City's Department of Ports. In New York, he led the department as it developed and administered marine, air, rail, and truck facilities throughout the city.

In addition, the New York port constructed, operated, and regulated the city's public markets.

Mr. Huerta earned a master's degree from the Woodrow Wilson School of Public and International Affairs at Princeton University. He earned his undergraduate degree from the University of California at Riverside.

I am very pleased, Mr. Chairman, to bring my strong endorsement to Michael Huerta's nomination. I believe he will bring strategic planning and innovative problem solving to the Department of Transportation. And I think that those who have worked with him, both in New York City and San Francisco, would agree that he is superbly qualified.

Thank you very much.

The CHAIRMAN. Well, I am sure that he is. And we thank you very, very much, Senator Feinstein. You can stay with us or excuse yourself if you have other appointments. We want to welcome Mi-

chael's parents who are in the audience, Solomon, Della Huerta. Do I pronounce that correctly?

Mr. HUERTA. Huerta, that's correct.

The CHAIRMAN. Well, we are glad to have them. Congressman Nancy Pelosi wanted to make it. She could not, due to a conflict in schedule, but she sent a letter in support.

[The information referred to follows:]

LETTER FROM CONGRESSWOMAN NANCY PELOSI

MAY 15, 1993.

Senator ERNEST HOLLINGS,
U.S. Senate,
Washington, DC 20510

DEAR MR. CHAIRMAN: I am writing to offer my strong support for the confirmation of Michael Huerta as Associate Deputy Secretary of Transportation for Intermodalism.

As the Executive Director of the Port of San Francisco, a self-supporting agency responsible for fostering commerce, fisheries, navigation and recreation along San Francisco's waterfront, Michael Huerta earned a well-deserved reputation for innovative and visionary leadership.

Under his leadership, the Port completed the first strategic plan in its 130-year history; developed its first capital plan which prioritized critical infrastructure improvements; reorganized and retrained the staff for the transportation market of the 1990's and negotiated plans for mixed-use developments—while at the same time substantially increased the Port's container volume and terminal efficiency.

Knowing firsthand of Michael Huerta's energy, vision, intelligence, and strong background in transportation issues, I strongly urge the Committee to approve his nomination.

Sincerely,

NANCY PELOSI,
Member of Congress.

The CHAIRMAN. Thank you, Senator.

Senator FEINSTEIN. Thank you very much, Senator.

The CHAIRMAN. Mr. Huerta, with respect to intermodalism, the big emphasis at the moment of course is maglev and high-speed rail. And I think we are going to have to get high-speed rail transportation before we move into the very expensive intermodal system that you are interested in.

But in the financing, since you know all of these tricks, how much would you say we need high-speed rail between New York and Miami? How would you expect the intervening States on a matching basis to want to pay for that? In other words, if you are Governor of Virginia, of North Carolina, of South Carolina, and of Georgia, you want the train to slow down. [Laughter.]

Mr. HUERTA. That is right.

The CHAIRMAN. How do you sell that to the taxpayers of South Carolina, saying what we really need is a train to go faster through our State, and by the way, we want you to pay for it? Where did that idea come from?

STATEMENT OF MICHAEL P. HUERTA, NOMINEE TO BE ASSOCIATE DEPUTY SECRETARY OF TRANSPORTATION

Mr. HUERTA. Those kinds of questions, Senator, Mr. Chairman, are certainly indicative of the sorts of tradeoffs you have to deal with when you are considering intermodal transportation or transportation generally.

I have dealt with similar issues, in how do you move the freight train out of the port of San Francisco when it happens to run through a very sensitive neighborhood in our city and a bunch of other neighborhoods on its way to the interior of the country.

One of the things—I do not have a clear idea at this point as to how we would resolve that specific problem, but I have some thoughts as to how we would structure looking at that kind of a problem.

The Secretary has mentioned in the past the need to have key transportation corridors. And perhaps you can focus on what are key areas that are deemed to be in the national interests, to provide for energy efficient and cost efficient movement of passengers and freight from one point to the other.

Now in looking at that, a very important thing to consider is of course, what are the impacts on the communities that are along the route that might suffer as a result of having the route go through there? And it seems to me that if you are going to be looking at the benefits of having high-speed transportation, you, at the same time have to consider what are the impacts along the way and weigh them one against the other.

And so it is a careful set of tradeoffs that you need to look at in looking at these sorts of problems. And that is something that I am very committed to in consultation with all the affected parties.

[The prepared statement, biographical data, and prehearing questions and answers of Mr. Huerta follow:]

PREPARED STATEMENT OF MICHAEL P. HUERTA

Mr. Chairman, Senator Danforth, members of the committee, I am honored to come before you today. I would like to thank you for the opportunity to address the committee and to respond to your questions as you consider my nomination to the position of Associate Deputy Secretary of Transportation and Director of the Office of Intermodalism. I am quite enthusiastic about the opportunity this position represents. Should the Senate confirm my nomination, I look forward to working with the Congress, industry and the users of the transportation system to work toward the development of a truly unified, integrated transportation system.

As you know, the Office of Intermodalism was created by Title V of the Intermodal Surface Transportation Efficiency Act of 1991, better known as ISTEA. The Office was given the responsibility for coordinating Federal policy on intermodal transportation and initiating policies to promote efficient intermodal transportation in the United States.

i believe that my experience and education have helped me to develop the skills needed to carry out these responsibilities. Since college, I have been interested in public service. I have a Masters degree in public affairs from the Woodrow Wilson School of Public and International Affairs at Princeton University. I received my BA in political science from the University of California at Riverside.

For over seven years, I have worked in transportation related agencies at the local level. From 1986 to 1989, I was Commissioner of the New York City Department of Ports, International Trade & Commerce. Since 1989, I have been Executive Director of the Port of San Francisco. The Port of San Francisco, like all ports, is by definition an intermodal facility. Every day, cargo is transferred from ships to trucks and railroads and back again for distribution to and from points throughout the United States. Intermodal freight transportation has proven itself to be a winner and has greatly enhanced commerce and trade. As Port Director in San Francisco, I placed heavy emphasis on improving rail and road access to our marine terminals. I firmly believe that by rebuilding the transportation infrastructure and enhancing intermodal connections, you enhance our competitiveness.

Although many ports focus primarily on the movement of freight, in San Francisco, I was fortunate to become involved in the movement of people as well. The San Francisco Bay Area is home to one of the nation's best developed passenger ferry systems. Although ferry transportation is nothing new, the Loma Prieta earth-

quake of 1989, and the resulting damage to our roads and bridges, caused the people in our region to place greater emphasis on ferries as a clean and efficient mode of transportation. In recent years, we have placed greater emphasis on improving the linkage between ferries and other modes of transportation to provide for easier transfers of passengers from one mode to the next.

Our nation has much to be proud of in the development of intermodal transportation. Innovations such as the containership and the double stack train began here. Nevertheless, there is much more to be done. The President and Vice President have talked about reinventing government. In keeping with this, I hope to help broaden our thinking about transportation. ISTEA provided a clear basis for thinking about transportation in terms of overall mobility instead of limiting our thinking to building, for example, the best highway or the best transit system. We need to continue to look at the best ways to move through the entire transportation system from one mode to another, not just how well a single segment works. As we build and rebuild the nation's transportation infrastructure, we must ensure that connections and choices between transportation modes are enhanced. And in enhancing these choices, we must be sensitive to issues and concerns involved in moving freight as well as moving people. Finally, we must take care to make transportation decisions that are sensitive to our natural environment while enhancing our competitiveness in the world economy.

I hope to focus the Office of Intermodalism toward finding practical solutions for specific intermodal issues and problems. mince I have been in the port industry, I have direct knowledge and experience in intermodal operations and some of the problems that exist out in the field. In my home state of California, rail access to the port system can be enhanced to improve transportation efficiency and air quality. More recently, I heard about Atlanta's proposal to develop an intermodal passenger terminal to facilitate the movement of people throughout the Atlanta area for the 1996 Olympic Games. Throughout the nation, I believe there are ways to improve intermodal linkages between automobiles, our most common mode of transportation for people, and other modes. I believe the Office of Intermodalism can play a facilitating and coordinating role to help find solutions to these and other problems.

If confirmed by the Senate, I look forward to the opportunity to work with you and the Congress toward resolving the transportation issues faced by our nation.

I would be happy to answer any questions that you might have at this time or at any time in the future. Thank you again for the opportunity to appear before you today.

BIOGRAPHICAL DATA

Name: Huerta, Michael Peter; address: 1932 Leavenworth Street, San Francisco, CA 94133; business address: Port of San Francisco, Ferry Bldg., San Francisco, CA 94111.

Position to which nominated: Associate Deputy Secretary.

Date of birth: November 18, 1956; place of birth: Riverside, CA.

Marital status: Single, never married.

Education: Woodrow Wilson School of Public and International Affairs, Princeton University, 1978–80, MPA; and University of California at Riverside, Riverside, CA, 1974–78, BA.

Employment Record

From–To	Name of Employer	Type of Work
1/89–Present	Port of San Francisco	Management of a Port Authority.
3/86– 1/89	City of New York	Commissioner (Agency Head).
1/85– 3/86	Coopers & Lybrand	Advisor assigned to the Government of St. Kitts and Nevis, West Indies. Tech. assistance program funded by U.S. A.I.D. to assist certain Eastern Caribbean govts. with investment promotion and export development.
7/80–12/84	Coopers & Lybrand	Supervising Consultant and Consultant.
6/79– 9/79	U.S. Mission to NATO	Research and analysis of defense planning issues.

Government experience: Executive Director, Port of San Francisco, California (1/89-Present); Committee Member, California Transportation Directions: Mobility for 2010, California Department of Transportation (3/86-1189); Intermittent Consultant

with the U.S. Agency for International Development (1/83-3/86); Consultant, Government of the District of Columbia, Office of the Deputy Mayor for Economic Development (1982); Consultant, State of Illinois, Department of Commerce and Community Affairs (1982); Consultant, U.S. Department of Energy (1981); and Consultant, U.S. Selective Service System (1980-1981).

Political affiliations: Contributor, Democratic National Committee, 1992 ($250); Contributor, Jim Gonzalez for Supervisor, San Francisco, California, 1992 ($300); Contributor, Feinstein for Senate, California, 1992 ($550); Contributor and Volunteer, Art Agnos for Mayor, San Francisco, California, 1991 ($500); and Volunteer, Save the Waterfront: No on proposition H, San Francisco, California, 1990.

Memberships: American Association of Port Authorities (Chairman, Commerce Committee); California Association of Port authorities (President); Project Open Hand (Board Member); Galeria de la Raza (Board Member); University of California, Riverside Alumni Association (Board Member); University of California, San Francisco Foundation (Board Member); San Francisco Bay Columbus Quincentenary Committee (Board Member); Friends of the Port of San Francisco (Board Member); California Council for International Trade (Board Member); Bay Dredging Action Coalition (Executive Committee); World Trade Club (Honorary Member); St. Francis Yacht Club (Honorary Member); City Club of San Francisco (Member); and Commonwealth Club of California (Member).

Honors and awards: Achievement Award, Hispanic Community Fund of the Bay Area, San Francisco, CA, 1992; Outstanding Young Graduate, UCR Alumni Association, University of California, Riverside, 1986; Princeton Graduate Fellowship; and California State Scholarship.

Published writings: Huerta, Michael P., "Executive Director's Report," Wharfside, published quarterly and distributed by the Port of San Francisco, California, 1989 to present; Huerta, Michael P., "State of the Ports," World Wide Shipping, October-November 1992; and Cooper, Richard V.L., and Huerta, Michael P., "Military Training and Youth Employment: A Descriptive Survey," in Job Training for Youth, edited by Robert E. Taylor, Howard Rosen and Frank C. Pratzner, Columbus, Ohio: The National Center for Research in Vocational Education, The Ohio State University, 1982.

QUESTIONS ASKED BY SENATOR HOLLINGS AND ANSWERS THERETO BY MR. HUERTA

Question 1. The position for which you have been nominated was only recently established. In your opinion, has the newly created office been successful so far?

Answer. In my opinion, the Office of Intermodalism has been very successful in many different areas. Since its establishment in July 1992 the Office has promoted the national intermodal policy of Congress through presentations to national interest groups, site visits to metropolitan planning organizations (MPOs), and in meetings with State DOT representatives and with transportation providers across the country. In addition, the Office has published a Department-wide survey of intermodal activities in January 1993, and a Preliminary Intermodal Data Inventory of USDOT databases in March 1993. The Office is also conducting regional Intermodal Coordination workshops on cross-cutting issues to improve communications and coordination between Federal regional offices.

I consider this to be only a beginning for the Office of Intermodalism and look forward to building substantially on these activities. I believe that the Office can take a more proactive role in identifying specific intermodal problems and taking actions to resolve them.

Question 2. What do you see as the mission of the Office of Intermodalism?

Answer. I believe that the mission of the Office of Intermodalism is to provide the Departmental leadership and coordination in developing intermodal transportation systems to move people and goods in an energy efficient manner, provide the foundation for improved productivity growth, strengthen the Nation's ability to compete in the global economy, and obtain the optimum yield from the Nation's transportation resources.

The Office serves as the Department of Transportation's principal advocate for intermodal transportation by coordinating and initiating transportation policies to promote efficient intermodal movements. Further, under my leadership, the Office will support the will of Congress, Secretary Pefla and the Administration by publicizing and promoting intermodal initiatives and programs within the Federal, State and local governments and in partnership with industry.

Question 3. The intended goal of the Office of Intermodalism is to obtain the optimum yield from the transportation resources of the United States. In order to realize this goal, what do you believe to be the main priorities of the Office?

Answer. In my conversations with Secretary Peña, he has indicated that it is his objective to make intermodal movements of passengers and freight as seamless as possible between their points of origin and ultimate destinations. The first priority will be to identify the bottlenecks and choke points that frustrate the flows of people and goods and to work to eliminate them.

As an equal, if not greater priority, the Office must advocate intermodal solutions to transportation problems by focusing on the movement of people and goods from one point to another and encouraging the various modes to work together.

Question 4. Intermodalism is receiving increased attention. In your opinion, how does the capability of the U.S. intermodal network compare with that of our trading partners?

Answer. I feel that it is necessary to differentiate between passenger and freight transportation systems when considering the effectiveness of the intermodal transportation systems of the United States and its overseas trading partners.

As regards freight transportation, the U.S. compares very favorably to our trading partners. The U.S.-flag shipping companies were the pioneers of intermodal container transportation, the development of containerships, and the development of innovations such as double stack trains and information management technologies for tracking cargoes. In addition, the geography of the United States with our great inland spaces makes it possible to utilize the efficiencies of long-distance rail freight movements. By comparison, the European railroads are largely dedicated to passenger movements and the European rail system is not structured to facilitate ready movement of rail freight from one nation to another. In the Far East, intermodal movements are largely confined to truck movements.

With regard to passenger transportation, the intermodal linkages between modes of transportation in the United States are less well developed than in some European nations where the national rail systems tie directly to major airports and in some cases, the airlines actually operate passenger trains to feed the airports.

Question 5. President Clinton has indicated that infrastructure improvement is one of his high economic priorities. Is intermodalism not a key element in infrastructure improvement?

Answer. Secretary Peña clearly recognizes the link between the infrastructure and intermodalism. In a recent speech, he said: "Before intermodal connections can be truly seamless, we must build and strengthen the surface transportation infrastructure * * *" The Secretary stated further: "* * * how much we spend [on infrastructure] is as important is making sure that the individual facilities we build work as a well integrated whole."

I fully support the two themes embodied in these statements: building the infrastructure linkages that will lead to seamless transportation, and before we build, planning to make sure that the facilities we build in this Nation are the ones we really need to "obtain the optimum yield from the Nation's transportation resources."

Question 6. As you know, the U.S.-flag maritime fleet is in economic decline. What is the role of intermodalism in improving the economic well-being of that industry?

Answer. It is my opinion that one of the reasons that the U.S. -flag fleet has been able to hold on as long as it has is that the major U.S. players have been at the forefront of intermodalism in the world shipping industry. The international competitive problem arises from the world industry adopting many of the intermodal advances first developed in the United States. As a result, it is more difficult for the U.S. industry, with higher operating costs, to compete solely on the basis of its technological advantage. Although future developments in intermodal technology will certainly benefit the U.S. flag merchant fleet, they should not be relied upon as the only remedy to help the industry compete worldwide.

Question 7. A major problem for rail-truck intermodal service in the eastern United States is the length of the haul. What do you envision is the role of DOT in helping to overcome the obstacles of serving these shorter haul markets?

Answer. The time and labor costs associated with cargo handling for short distance rail-truck intermodal service may make these shipments less efficient than service using only trucks. Nevertheless, air quality or traffic congestion considerations might warrant development of intermodal freight routes in the eastern U.S. and I believe this is an important area for future study.

The Department is committed to improving the Nation's entire transportation system through more effective planning, the provision of better access, and the elimination of counterproductive regulations. These activities will minimize the time and handling costs for all rail-truck movements, regardless of the total transport distance.

Question 8. What is your view regarding whether intermodal freight facilities are eligible for federal funding under the Intermodal Surface Transportation Efficiency Act if such a facility would relieve highway congestion and deterioration, and help improve safety and air quality?

Answer. Regarding intermodal freight project eligibility for flexible funding under ISTEA, the Federal Highway Administration has produced a policy interpretation of eligible rail-related activities on February 9, 1993, indicating that intermodal rail-freight projects would be eligible for funding if studies prove that the traffic diverted to rail could significantly contribute to the attainment of ambient air quality standards in a nonattainment area. I would be happy to provide the Committee with copy of this policy interpretation memorandum. I believe that the Office of Intermodalism must continue to work with the modal administrations to identify additional ISTEA program opportunities for funding intermodal freight projects.

MEMORANDUM

Subject: Information: Use of Federal-Aid Highway Funds for Improvements to Rail Facilities

From: Associate Administrator for Program Development

To: Regional Federal Highway Administrators Federal Lands Highway Program Administrator

The purpose of this memorandum is to provide guidance on the extent the ISTEA has impacted eligibility of Federal-aid highway funding for improvements to rail facilities.

Section 2 of the ISTEA discusses the importance of developing a unified, interconnected intermodal transportation system. It presents broad policy statements in support of this goal. However, Section 2 in itself does not provide the authority or establish eligibility criteria for using Federal-aid highway funds for specific activities. Rather, it is necessary to turn to Title 23 and the accompanying highway laws to determine the manner in which Federal-aid highway funds can support intermodal activities such as rail transportation.

Under Title 23, Federal highway funds have long been able to participate in safety improvements at railroad-highway crossings. Under 23 U.S.C. 130(a), crossing safety work has even included relocation of portion of a rail line where this is less costly than eliminating existing crossings by grade separations or relocation of the highway. These types of crossing safety improvements continue to be eligible for Federal funding.

Certain types of Federal funding have also been eligible to support capital improvements to rail transit systems. Prior to the ISTEA, urban funds could be used for this purpose. After ISTEA Surface Transportation Program (STP) funds, including other Federal funding sources transferred to the STP category, can be used for capital improvements for rail transit projects eligible for funding under the Federal Transit Act. Even National Highway System (NHS) funds can be used for rail transit projects in some limited circumstances as described in 23 U.S.C. 103(i)(3).

In addition, Congestion Mitigation and Air Quality (CMAQ) Improvement Program funds can be used for a rail improvement where it meets the purposes of that program. For example, since 23 U.S.C. 149(b) uses the terms, "a transportation project or program," rail projects that are included In an approved State Implementation Plan (SIP) and have air quality benefits are eligible. Other rail projects not included in an approved SIP could be eligible for CMAQ funds if it is demonstrated that they have air quality benefits for the pollutant(s) for which the area is in nonattainment. All transportation projects funded under the CMAQ program must be located in a nonattainment area and must have demonstrated air quality benefits for the pollutant(s) for which the area is classified as nonattainment.

A new provision to Title 23 added by the ISTEA (23 U.S.C. 133(b)(1)) allows STP funds to be used for "* * * construction or reconstruction [highway and bridges] necessary to accommodate other transportation modes * * *" This same general provision is also incorporated into amended 23 U.S.C. 142(c) which extends the application of this "accommodation" feature to NHS, CMAQ and interstate Maintenance funds. We view this new feature of Title 23 as allowing use of the designated Federal funding sources to pay for adjustments to highway elements to accommodate a rail line. This might include lengthening or increased vertical clearances of bridges, adjusting drainage facilities, lighting, signing or utilities, or making minor adjustments to highway alignments.

The "accommodation" feature does not allow use of funds to purchase right-of-way for a rail line, to purchase right-of-way to relocate a highway so that a rail line may occupy existing highway right-of-way, or to construct the rail line or any roadside features whose primary function is related to an adjacent rail line. However, where

an existing highway facility directly constrains operations of an existing rail line (for example, a highway structure with limited vertical clearance over a rail line may not allow for double-stack rail operations), adjustments to the rail line including relocation of the line and purchase of right-of-way would be an allowable use of Federal funds where it can be shown to be more cost-effective than eligible adjustments to the existing highway facility.

Another new provision added to Title 23 (23 U.S.C. 133(b)(8) and a new definition in 23 U.S.C. 101(a)) allows STP funds set-aside for transportation enhancement activities to be used for the rehabilitation and operation of historic railroad facilities. A historic railroad facility should be so designated by the State Historic Preservation Officer or other governing entity with appropriate authority.

Questions regarding the overall policy presented in this memorandum may be directed to Mr. Jerry L. Poston, Chief, Federal-Aid Program Branch (202-366-4652). Questions concerning specific uses of CMAQ funds or STP transportation enhancement funds should be directed to Mr. James M. Shrouds, Chief, Noise and Air Quality Branch (202-366-4836) or Mr. Fred Skaer, Chief, Environmental Programs Branch (202-366-2065), respectively.

ANTHONY R. KANE.

Question 9. What do you believe should be DOT's role in fostering the growth and development of intermodal passenger transportation terminals?

Answer. During this Administration, the Department will support the growth and development of intermodal passenger terminals through several courses of action: examining regulatory opportunities, streamlining project approval, seeking funding flexibility, and just as important, promoting good ideas. However, the actual decisions for funding the development of intermodal passenger terminals lies with the Metropolitan Planning Organizations and State agencies. Intermodal passenger transportation terminals will be an integral part of future planning and construction activity.

The Department will continue to employ memorandums of agreement, signed by all participating agencies, to identify lead offices and contact points for expediting the processing of documents and construction activities associated with these very complex projects. The Department also will continue to encourage State and local decisionmakers to shift and pool funds from several sources to finance projects like intermodal passenger terminals to meet the needs of their communities.

Question 10. How do you evaluate the prospects for high-speed ground transportation systems, if connected to airports as well as downtown transportation terminals, to substitute for short-haul aviation segments in the present aviation hub and spoke system?

Answer. Hub and spoke systems permit greater flight frequencies between city pairs which do not have the large volumes of point to point traffic required to support frequent service on large aircraft. High speed rail systems are generally considered to be most effective in areas of high passenger volume. With this consideration in mind, I believe that high-speed rail is not likely to be an alternative to short-haul aviation segments because the smaller communities served by the air system do not -generate sufficient traffic and therefore, in the foreseeable future, high-speed rail will be limited to transportation corridors between major metropolitan cities which are in themselves hubs.

High-speed rail, however, can be an attractive alternative to airline travel between hubs when those hubs are a short haul from each other. The development of additional high-speed rail transportation corridors is being evaluated by the Federal Railroad Administration under the Administration's High-Speed Rail initiative (see attached).

DOT PROPOSES $1.3 BILLION FOR HIGH-SPEED RAIL INITIATIVE

Transportation Secretary Federico Peña today joined members of Congress to unveil a comprehensive, 5-year, $1.3 billion high-speed rail initiative that represents a major step toward making good on the vast economic, environmental, and technological promise of high-speed ground transportation.

In announcing the program, Peña said, "A strong, technologically advanced rail system to transport passengers is critical to our economic competitiveness. We want to work in partnership with States and local communities to build high-speed rail corridors that will create jobs and spur growth, and with the private companies and research institutions that are working hard to develop the next generation of rail technology."

States and cities from coast to coast have expressed interest in developing intercity high-speed rail corridors. Nearly $1 billion in funding under the plan announced toady will allow projects to advance on a number of these corridors.

"High-speed rail has an important role to play in relieving highway and airport congestion in intercity corridors around the country," Peña added. "High-speed rail can help cut down on pollution, ease costly travel delays, and complement air travel routes to create a seamless, intermodal transportation network. And, supporting these new technologies also has the potential to ease the transition of defense companies and workers to the civilian sector."

The Secretary noted that the initiative also makes good on President Clinton's commitment during his campaign to support development of high-speed rail service and technology.

Peña said that the $1.3 billion program would fund investment in various rail corridors, as well as development of magnetic levitation (maglev) prototype technology. This Federal investment is expected to generate a total of $2 billion in investment in high-speed rail infrastructure, including matching State, local, and private funds. The proposed legislation to implement the high-speed initiative will be sent to Congress today.

Peña said, "State and local officials from San Diego and Boston have told me they see high-speed rail as a critical part of their area transportation networks. We'll be supporting these initiatives as well as development of the new technologies that will keep the United States competitive in the global marketplace."

Over the next 5 years, the package will make available $982 million to State and local governments to finance high-speed rail improvement projects. This is the first separate program of Federal financial support for implementation of high-speed rail corridors outside the Northeast Corridor and will help upgrade existing rail corridors that could ultimately allow speeds of up to 150 mph for passenger service. Funding, to be administered by the Federal Railroad Administration, will be targeted to projects that serve two or more major metropolitan areas that are no more than 600 miles apart.

Among the cities that are eligible to seek FRA funding under this program are five priority high-speed rail corridors designated by DOT last year. The are:

- Chicago to St. Louis, Detroit, and Milwaukee.
- Miami-Orlando-Tampa.
- San Diego-Los Angeles-Bay Area and Sacramento via the San Joaquin Valley.
- Eugene-Portland-Seattle-Vancouver, B.C. in Canada.
- Washington, DC-Richmond-Raleigh-Charlotte.

The existing New York State high-speed corridor (New York City-Albany-Buffalo) is also eligible. Other corridors, proposed by the States and meeting criteria set forth in the bill, can also apply to the Secretary for inclusion in the program. Northeast Corridor improvements from Washington, DC to Boston will continue to be funded under a separate program.

Peña said that like other DOT grant programs, the high-speed rail initiative would be a partnership with State and local governments and the private sector. Because the Government seeks a true partnership, individual improvements may receive Federal funding of up to 80 percent, but the Federal share from the high-speed rail program for a total group of improvements on a corridor cannot exceed 50 percent of the public contribution.

In addition to the corridor grant program, the initiative announced today will make available nearly $300 million to support technology development, including work on a maglev prototype. The prototype is expected to be superior to that being developed by other countries and, in addition to the benefits of keeping the U.S. transportation system technologically competitive. also would reduce pollution since it does not have to rely on petroleum fuel.

The administration's program also includes a $25 million applied research component. This funding is intended to ensure that as rail-related scientific advances occur they are incorporated into high-speed rail development.

The CHAIRMAN. Well, watch that one closely for us, because we want to and we will cooperate. We are in a situation right here with Union Station trying to get everything to move together. It took us years to do it. We finally had to accomplish it through the Appropriations Committee and because we could not get things moving through the committee itself.

We can get things moving through this committee if you make sound suggestions. But when they come out in the initial stage and say, "We are going to have funding on a matching basis here for the several States to have the train move at high speed without stopping throughout that particular State, and by the way, that

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State is going to pay for it." I want you to come down to Columbia, SC, and help me to explain that to them. [Laughter.]

Mr. HUERTA. I would be delighted to.

The CHAIRMAN. Senator Pressler.

Senator PRESSLER. The General Accounting Office has issued a report this past month on intermodal freight transportation. The report suggests that the Department of Transportation's office of intermodalism, which you will head, established under the Intermodal Surface Transportation Efficiency Act, should work with State and local transportation agencies and industries to provide funding for rail-truck intermodal freight facilities.

Now the GAO report encourages the Transportation Secretary to issue a determination of whether rail-truck facilities should qualify for Federal funding under ISTEA, given that they would relieve highway congestion and deterioration.

So, my question is that most studies demonstrate that motor carriers are essentially being subsidized, given the amount of damage heavy trucks do to our highways. In light of this fact, what is your response to the recommendation by GAO?

Mr. HUERTA. As a former director of the New York City Department of Ports and currently the director of the Port of San Francisco, I have a great interest in rail and truck access to marine terminal facilities and transportation facilities generally.

And it is my view that it was the intent of the Congress, through ISTEA, to ensure that rail freight projects and truck access projects would qualify for funding under the provisions of ISTEA.

Recently, in February, the Federal Highway Administration released a policy interpretation looking at precisely this issue. And I would be happy to provide a copy of it for you and the committee.

But in it, the salient point is that it determined that these sorts of projects would be eligible for funding if studies proved that the traffic diverted to rail, for example, could significantly contribute to the attainment of ambient air quality standards in a nonattainment area.

Now that is one specific area that could be looked at. And I think this is something that bears some further looking into as well.

Senator PRESSLER. Thank you very much.

The CHAIRMAN. Thank you very, very much, Mr. Huerta. We will leave the record open for any questions by our other colleagues who could not make it here this afternoon. We will try to move the nomination out to the floor of the Senate for confirmation later this week.

Senator PRESSLER. I have some additional questions I will submit for the record.

The CHAIRMAN. Thank you very much. The committee will be in recess, subject to the call of the Chair.

[Whereupon, at 2:30 p.m., the hearing was adjourned.]

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